667

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No 274.

J. SCHAUMBURG, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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INDEX.

	Original.	Print.
Style of court	3	2
Writ of error from Supreme Court United States	1	1
Citation and acceptance of service	2	1
Writ of error from circuit court United States	4	2
Citation and acceptance of service	5	2
Summons	7	3
Marshal's return to summons	8	3
Declaration	9	4
Pleas	11	5
Replication	13	7
Rejoinder	14	8
Suggestion of death of two of the defendants	15	8
Calling of jury	15	8
Verdict	16	8
Judgment upon verdict	16	8
Bill of exceptions	17	9
Exhibit A, certified copies of accounts from Treasury Department	33	13
B, credits claimed by defendent on trial	54	21
C, commission of Schaumburg as second lieutenant U. S. A.	55	22
D, commission as first lieutenant	56	23
Certificates to Exhibit E	56	23
Exhibit E, letter of Secretary Cass to Schaumburg	57	24
F, letter of Schaumburg to General Macomb	86	35
G, letter of Schaumburg to General Macomb	87	36
H, letter of Schaumburg to General Macomb	88	37
I, letter of Schaumburg to General Macomb	89	37
K, letter of Ex-President Jackson to Schaumburg	90	37
L, letter of Schaumburg to Major Thomas, A. A. G.	94	42

	Original.	Print.
Exhibit M, letters of Schaumburg to Second Auditor Treasury Department	97	43
N, letter of Schaumburg to General Alvord, Paymaster-General	116	48
O, letter and account from Treasury Department	125	51
Q, extract from official Army Register	134	56
P, table showing pay of the Army	135	57
R, resolution of the United States Senate, March 19, 1845	136	59
S, resolution of the United States Senate, March 2, 1849	138	59
Clerk's certificate to record	140	60
PROCEEDINGS IN CIRCUIT COURT.		
Argued	141	60
Opinion	142	60
Bond sur writ of error	143	62
Clerk's certificate	145	63

1 UNITED STATES,
Eastern District of Pennsylvania, sct:

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between James W. Schaumburg, plaintiff, and The United States of America, defendant, in a plea of debt, a manifest error has intervened, to the great damage of the said James W. Schaumburg, as in his complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done,

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this sixteenth day of January, A. D. one thousand eight hundred and seventy-eight, and in the one hundred and second year of the Independence of the said United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.

Allowed.

W. McKENNAN,
Cir. Judge.

2 THE UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein James W. Schaumburg plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this sixteenth day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

W. McKENNAN,
Cir. Judge.

I accept service for the defendant.

JOHN K. VALENTINE,
Att'y for U. S. for the Eastern District of Penn'a.

3 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit. April session, 1877.

JAMES W. SCHAUMBURG, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT in error. } No. 1.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

Be it remembered that heretofore, to wit, on the 13th day of October, A. D. 1876, a writ of error to the district court of the United States was issued to reverse the judgment of the said court in said cause, and on the 31st day of March, A. D. 1877, the record of the said court on writ of error was received from the clerk of the said court and filed as follows, to wit:

4 UNITED STATES,
Eastern District of Pennsylvania, sct:

The President of the United States to the judge of the district court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between the United States of America, plaintiff, and James W. Schaumburg, defendant, in a plea of , a manifest error has intervened, to the great damage of the said James W. Schaumburg, as in his complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the judges of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, sitting at Philadelphia, on the first Monday of April next, 1877, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this thirteenth day of October, A. D. one thousand eight hundred and seventy-six, and in one hundred & first year of the Independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk Cir. Ct U. S. E. D. of Pa.

Allowed 19th October, 1876.

JOHN CADWALADER, *Judge.*

5 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States for the eastern district of Pennsylvania, to be holden at Philadelphia on the first Monday in April next (1877),

pursuant to a writ of error filed in the clerk's office of the district court of the United States of America for the eastern district of Pennsylvania, wherein James W. Schaumburg is plaintiff and you are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand and seal this 19th day of October, one thousand eight hundred and seventy-six.

[SEAL.] (Signed) JOHN CADWALADER,
Judge District Court.

6 Pleas before the honorable the judge of the district court of the United States for the eastern district of Pennsylvania. Of August sessions, 1874. No. 4.

It is thus contained:

Summons debt.

THE UNITED STATES
vs.
JAMES W. SCHAUMBURG, JAMES PAGE, AND George W. Page.

Be it remembered that on the 19th day of September, A. D. 1874, upon præcipe filed by William McMichael, esquire, United States attorney for the district aforesaid, a summons issued, which, with the marshal's return thereto, is in the words and figures following, to wit:

7 UNITED STATES,
Eastern District of Pennsylvania, set:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

We command you that you summon James W. Schaumburg, James Page, and George W. Page, late of your district, if they may be found therein, so that they be and appear before the judge of the district court of the United States, in and for the eastern district of Pennsylvania, at a session of the same court, to be holden at Philadelphia on the first Monday of October next, to answer to the United States of America of a plea that they render unto them the sum of twenty thousand dollars, which to them they owe, and from them they un-
8 justly detained, as it is said, &c., and have you then there this writ.

Witness the honorable John Cadwalader, jugde of the said court, at Philadelphia, this nineteenth day of September, A. D. 1874, and in the ninety-ninth year of the Independence of the said United States.

[SEAL.] AARON S. SWARTZ,
Pro Clerk U. S. Dis't Court.

(Endorsed:)

September 23, 1874, served the within writ on James & Geo. W. Page, by reading the same within hearing, and leaving a true and attested copy thereof with each of them, and on James W. Schaumburg, by leaving a true and attested copy thereof at his dwelling-house, with an adult member of his family.

So answers—

JAMES W. KERNS,
U. S. Marshal,
Pro JACOB S. DECKER,
Deputy.

9 Afterwards, to wit, on the 28th day of September, A. D. 1874, the said William McMichael, United States attorney, presents the declaration of the plaintiffs, and the same being filed, is in the words and figures following, to wit:

Declaration.

In the district court of the United States for the eastern district of Pennsylvania. Of August session, 1874. No. 4.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

James W. Schaumburg, James Page, and G. W. Page, late of the district aforesaid, were summoned to answer the United States of America of a plea that they render to the said United States of America the sum of $20,000, current money of the United States, which they owe to, and unjustly detain from, the said United States of America.

And thereupon the said United States of America, by William McMichael, their attorney, complain for that whereas James W. Schaumburg, James Page, and George W. Page, heretofore, to wit, on the fourteenth day of September, 1861, at the district aforesaid, by their certain writing obligatory, sealed with their seals, and now shown to the court here, the date whereof is the day and year aforesaid, acknowledged themselves jointly, severally, and firmly, their heirs, executors, and administrators, and each and every of them, to be bound unto the United States of America in the sum of $20,000 above demanded, to be paid to the United States of America; which said bond or writing obligatory was and is subject to a certain condition thereunto written, as follows, to wit:

That whereas the above bounden James W. Schaumburg was appointed an additional paymaster in the Army of the United States aforesaid, then if the said James W. Schaumburg should well
10 and truly execute and faithfully discharge, according to law and to instructions received by him from proper authority, his duties as paymaster aforesaid, and he, his heirs, executors, or administrators, should regularly account when thereunto required for all moneys received by him from time to time, as paymaster aforesaid, with such person or persons as should be duly authorized and qualified on the part of the said United States for that purpose, and also refund at any time when thereunto required any public money remaining in his hand unaccounted for, then this obligation should be null, void, and of no effect; otherwise to remain and be in full force and virtue.

Nevertheless, the said plaintiffs say that the said James W. Schaumburg, after the making of the said writing obligatory, to wit, on the fourth day of April, A. D. 1871, did not well and truly execute and faithfully discharge, according to law and to instructions received by him from the proper authority, his duties as paymaster aforesaid, in that he did not then and there pay over to the said United States a large sum of money, to wit, the sum of $306.30, as required by the provisions of the act of Congress in such case made and provided, which said sum of money was then and there due the said United States by the said James W. Schaumburg in his said capacity of paymaster as aforesaid, on account of moneys that theretofore had come into his possession and not paid over to the said United States.

Nor has the said James W. Schaumburg at any time since paid or caused to be paid to the said United States the said sum of $306.20, or

any part thereof, although often requested so to do, but the same to pay, or any part thereof, hath hitherto wholly neglected and refused, and still doth refuse.

By reason of which said breach the said writing obligatory became forfeited, and an action hath accrued to the United States to demand and have of and from the said defendants the said sum of $20,000 above demanded.

Yet the said defendants, although often requested so to do, have not as yet paid the said sum of money or any part thereof to the said plaintiffs, or otherwise, according to the writing obligatory and condition, but to pay the same or any part thereof, have hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs of $20,000, and therefore they bring their suit, &c.

WM. McMICHAEL.

And afterwards, to wit, on the 5th day of October, 1874, Charles Henry Jones, esquire, one of the attorneys and counsellors of the said court, by order in writing, enters his appearance for the said defendants.

And afterwards, to wit, on the third day of November, 1874, the defendants, by their said attorney, make their pleas in the words and figures following, to wit:

11 *Pleas.*

In the district court of the United States for the eastern district of Pennsylvania. August session, 1874. No. 4.

THE UNITED STATES OF AMERICA
vs.
JAMES W. SCHAUMBURG, JAMES PAGE, AND George W. Page.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

The defendants plead—

Payment, with leave to give defalcation in evidence.

Set off.

And for a further plea the said defendants say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that at the time of the commencement of this suit there was due and owing from the said defendants to the said plaintiff upon the said writing obligatory by the said condition thereof, a certain sum of money, to wit, the sum of $306.20 lawful money of the United States, to wit, at the district aforesaid. And the said defendants further say that the said plaintiff before and at the time of the commencement of this suit was and still is indebted to said defendant, James W. Schaumburg, in a much larger sum of money than the money so due and owing from said defendant, James W. Schaumburg, to the plaintiff—that is to say, in the sum of $100,000, for undrawn pay and emoluments of said defendant, James W. Schaumburg, as an officer of the Army of the United States, unlawfully and wrongfully withheld by plaintiff from said defendant, James W. Schaumburg; and also for one additional ration per diem for every five years the said defendant, James W. Schaumburg, has served in the Army of the United States, before and at the time of the commencement of this suit due and owing, and still

due and owing by plaintiff to said defendant, James W. Schaumburg, in accordance with the laws of the United States in such case made and provided, which indebtedness was duly presented to the accounting officers of the Treasury of the United States for their examination and credit therefor demanded, which claim was by them disallowed.

And defendants say that said defendant, James W. Schaumburg, was duly nominated and appointed, and by and with the advice and consent of the Senate of the United States duly commissioned, a first-lieutenant of the First Regiment of Dragoons (now the First Regiment of Cavalry) in the Army of the United States, to wit, on the first day of July, A. D. 1836, to rank, to wit, from the first day of March, A. D. 1836, and thereby became entitled to enjoy the pay and emoluments, dignities, privileges, and honors to the said office by right belonging. That afterwards, through no fault or delinquency of his, the said James W. Schaumburg, and against his wishes, and in violation of the rules and regulations for the government of the Army of the United States and the law of the land, he was wrongfully and unlawfully and arbitrarily deprived of the use and enjoyment, pay and emoluments of his said office, to wit, the office of first lieutenant of the First Regiment of Dragoons (now the First Regiment of Cavalry), United States Army, and his name arbitrarily, unlawfully, and irregularly omitted from the Army Register to his great wrong and injury.

That afterwards, to wit, on the eleventh day of January, A. D. 1844, the President of the United States, after a careful and faithful investigation of the arbitrary and unlawful conduct of his subordinates in the War Department of the United States in unlawfully depriving him, the said James W. Schaumburg, of the use and enjoyment of his said office, and the pay and emoluments thereof as aforesaid, ordered and directed that the name of said defendant, James W. Schaumburg, which had been improperly taken from the Army Register, should be replaced thereon, he having never ceased to be an officer of the United States,

12 and that the said James W. Schaumburg should be restored to the full enjoyment of his said office, as by law and right he was entitled, and always had been entitled, to enjoy it, and in obedience to said orders and command of the President of the United States, said defendant, James W. Schaumburg, was restored, and his name replaced upon the Army Register, to wit, at the head of the list of first lieutenants of the First Regiment of Dragoons, United States Army, according to the date of his commission and rank as aforesaid.

That afterwards, to wit, on the twenty-fourth day of March, A. D. 1845, the name of defendant, James W. Schaumburg, was again arbitrarily and unlawfully erased from the Army Register without cause, through no fault of his, without his knowledge and against his wishes, and by no process known to the rules and regulations for the government of the Army of the United States, nor to the law of the land, but in direct violation of law, and his vested and acquired rights as a duly appointed and commissioned officer of the Army of the United States as aforesaid, and to his great wrong and injury. And from that time to the commencement of this suit he has been, and still is, arbitrarily and unlawfully refused his pay and emoluments, and excluded from the use and enjoyment of the honors, dignities, and privileges of his said office, to his great wrong and injury, though he has not since that time, to wit, the twenty-fourth day of March, A. D. 1845, engaged in any other employment whatever, and has ever been bodily and in other respects able and willing to perform all the duties and requirements of his said office, and to avail himself within that time of the several promotions to supe-

rior grades of office in the said Army to which by law he was entitled by virtue of his said commission as aforesaid. Yet, notwithstanding he has never ceased, within that time, to persistently and urgently demand and require from time to time, at the hands of the plaintiff, all his pay and emoluments as aforesaid, and a complete restoration to all the rights and privileges, use, and enjoyment of his said office, of which he has been arbitrarily, wrongfully, and unlawfully deprived as aforesaid, the plaintiff has persistently refused and still doth refuse to pay him his undrawn pay, rations, emoluments, and salary as aforesaid, which has been regularly appropriated by the Congress of the United States from time to time for that purpose, and to permit him to enjoy the privileges and honors of his office as aforesaid; which said sums of money so due and owing from the said plaintiff to the said defendant, James W. Schaumburg, are wholly unpaid, and greatly exceed the money so due and owing from said defendants to the said plaintiff, by virtue of the said condition of the said writing obligatory, and so much of said sum of money so due and owing from the said plaintiff to defendant, James W. Schaumburg, as aforesaid, as shall be necessary in this behalf, they, the said defendants, are ready and willing, and offer to set off and allow against the said sum of money so remaining due and payable by the condition of the said writing obligatory, and as to the balance of said sum of money so due and owing from the said plaintiff to said defendant, James W. Schaumburg, as aforesaid, said defendant, James W. Schaumburg, asks a judgment or certificate for the same against said plaintiff, according to the form of the statute in such case made and provided.

And this the said defendants are ready to verify, wherefore they pray judgment, &c.

CHARLES HENRY JONES,
Attorney for Defendants.

13 And afterwards, on the 16th day of March, A. D. 1875, the plaintiffs, by their attorney, made the following replication:

Replication.

In the district court of the United States for the eastern district of Pennsylvania. August sessions, 1874. No. 4.

THE UNITED STATES
vs.
JAMES W. SCHAUMBURG ET AL.

And the said plaintiffs, as to the plea of the said defendants by them first above pleaded, and whereof they have put themselves upon the country, do the like.

And the said plaintiffs, as to the pleas of the said defendants by them secondly and thirdly above pleaded, say that the said plaintiffs, by reason of anything by the said defendants in those pleas alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendants, because they say that the said plaintiffs were not nor are not indebted to the said defendants in manner and form as the said defendants have above in their second and third pleas in that behalf alleged.

And this the said plaintiffs pray may be inquired of by the country, &c.

WILLIAM McMICHAEL,
Per H. P. B.,
Attorney for Plaintiffs.

14 And afterwards, on the 25th day of March, 1875, the defendants, by their said attorney, made their rejoinder in the words following, to wit:

Rejoinder.

In the district court of the United States for the eastern district of Pennsylvania. Of August sessions, 1874. No. 4.

THE UNITED STATES OF AMERICA
vs.
JAMES W. SCHAUMBURG, JAMES PAGE, AND George W. Page.

And the said defendants, as to the said replication of the said plaintiff to the said pleas of the said defendants secondly and thirdly above pleaded, and which the said plaintiff hath prayed may be inquired of by the country, doth the like.

CHARLES HENRY JONES,
Attorney for Defendants.

15 And afterwards, on the 23rd day of November, A. D. 1875, the attorney of the United States comes and suggests the death of two of the said defendants, in the words following, to wit:

D. C. U. S., E. dist. of Penn'a. Aug. sess. 1874. No. 4.

UNITED STATES
vs.
JAMES W. SCHAUMBERG.

And now, Nov. 23rd, 1875, comes John K. Valentine, attorney for the United States, and suggest that James Page and George W. Page, two of the above named defendants, are deceased.

And thereupon, to wit, on the day and year last aforesaid, it is ordered that a jury come to try the issue joined in this cause.

And upon the same day came the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury aforesaid being called
16 likewise come, to wit: Adolphus W. Stewart, Andrew R. McGowan, Edmund W. Backer, Edward M. Johnson, John C. Dawson, James Hamilton, William D. Smith, Charles S. Corfield, Isaac H. Kay, William Parker, Benjamin T. Baker, and Henry Beame, who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this cause between the said United States and James W. Schaumburg.

And afterwards, on the 24th day of November, 1875, the jurors aforesaid, upon their respective oaths and affirmations aforesaid, do say that upon the issue joined in this case they find for the defendant.

Whereupon it is considered by the court that the said plaintiffs take nothing by their said suit, and that the said defendant go thereof without day.

17 And, afterwards, to wit, on the 11th day of April, A. D. 1876, the plaintiffs and defendant, by their respective attorneys, tender a bill of exceptions, and the same being signed by the judge of the said court is in the words following:

Bill of exceptions.

Be it remembered that at the August sessions, A. D. 1874, of the district court of the United States for the eastern district of Pennsylvania, came into court The United States of America and impleaded Jame' W. Schaumburg, George W. Page, and James Page, in which the said plaintiff declared (prout non) and the said defendants pleaded (prout pleas.)

And thereupon issue was joined between them.

And afterwards to wit, at a session of said court, held at the
18 city of Philadelphia, before the honorable John Cadwalader, judge of the district court of the United States for said district, on Tuesday, the twenty-third day of November, A. D. 1875, the aforesaid issue between the said parties came to be tried by a jury of the said district, for that purpose duly empanneled (prout list of jurors), at which day came as well the said plaintiff, by John K. Valentine and Henry Hazlehurst, attorneys, as the said defendants, by William Wheeler Hubbell, attorney; and the jurors of the jury aforesaid, empanneled to try the said issues being also called, came and were then and there, in due manner, chosen and sworn, or affirmed, to try the said issue; and thereupon the counsel of plaintiff suggested the death of both said George W. Page and said James Page, two of the defendants.

And upon the trial the counsel of the said plaintiff put in evidence a certain account on behalf of the United States, with the defendant
19 James W. Schaumburg, as an additional paymaster in the United States Army, and claimed a balance of indebtedness due to said plaintiff by said defendants in the sum of $306.20 (prout copy of the same hereto annexed, Exhibit (A) and closed.

The defendants then by their said attorney opened in defence, and claimed an indebtedness on the part of the said plaintiff to the said defendant James W. Schaumburg, as a commissioned officer of the Army of the United States, in the sum of $68,140.71 in sundry items as per schedule of the same then and there exhibited in evidence, (prout copy of the same hereto annexed, marked Exhibit B), and claimed a verdict of said jury in the several items of $280.50, $10,548.75, $57,591.95, as in said schedule specified, in the aggregate amounting to said sum of $68,140.71, and for judgment upon the same in favor of the said
20 defendants and against the said plaintiff.

The defendants also put in evidence before the said jury a certain commission dated 10th May, A. D. 1834, appointing said James W. Schaumburg a second lieutenant in the regiment of dragoons of the Army of the United States (prout copy of the same hereto annexed, marked Exhibit C).

And defendants also put in evidence a certain commission dated the first day of July, A. D. 1836, appointing said James W. Schaumburg a first lieutenant in the regiment of dragoons of the Army of the United States (prout copy of the same hereto annexed, marked Exhibit D).

Defendants also put in evidence copies of certain papers certified by the War Department to prove that said defendant James W. Schaumburg had not resigned his said commission of first lieutentant and was still an officer of the Army of the United States by virtue of said
21 commission, and entitled to his pay and emoluments as such (prout copies of the same hereto annexed, marked Exhibit E).

Defendants also put in evidence without objection certain papers to prove the same, and diligence of the said defendant Schaumburg in as-

serting his claims (prout copies of which hereto annexed, marked Exhibit F).

Letter of June 10th, 1836, from defendant to General A. Macomb, commanding in chief U. S. Army, Washington (Exhibit G).

Letter of defendant to General A. Macomb, dated June 20th, 1836 (Exhibit H).

Letter of defendant to General A. Macomb dated July 12th, 1836 (Exhibit I).

Letter of defendant to General Macomb, dated July, 23rd, 1836 (Exhibit K).

Letter of General Andrew Jackson, ex-President of the United States, dated Hermitage, June 12, 1843 (Exhibit L).

Letter of defendant to L. Thomas, Ass't & Acting Adjutant General, dated February 7, 1845.

Defendants, to prove demand and refusal of indebtedness claimed and the amount thereof, put in evidence certain papers, marked Exhibits M, Exhibit N, Exhibit O, Exhibit P, Exhibit Q; printed Army
22 Register 1845, page 11.

Plaintiff, in rebuttal, offered in evidence under certificate of the War Department a certain copy of a paper or alleged military history, dated March 8th, 1875, to which defendant's counsel objected and the court sustained the objection, to which plaintiff's counsel exeepted.

And thereupon the defendant's counsel agreed to admit in evidence so much of said paper as purported to be a copy of the order of the Secretary of War dated March 24th, 1845, and a copy of the resolution of the Senate therewith, which were accordingly admitted in evidence (prout copy of said paper hereto annexed, marked Exhibit R).

Defendant's counsel, in surrebuttal, produced in evidence certain resolutions of the Senate of the United States in executive session (prout copies of the same hereto annexed, marked Exhibit S).

23 And thereupon both sides closed; and the court charged the jury inter alia.

The court instructed the jury as follows:

"In March, 1845, the President of the United States directed that the name of the defendant (Schaumburg) be erased from the Official Army Register, and by General Order of 24 March, 1845, this direction of the President was promulgated from the War Department by the Secretary of War with a declaration that this was done without reproach to the defendant.

"The question of the power of the President to dismiss the defendant from the Army is not at this day doubtful. The President had the power; and the question is whether the direction carried into effect the power in this case. The question thus becomes one of mere interpretation. What is the effect of an order of the President erasing the name of an officer from the Army Register? Its meaning, I think, is that he was dismissed from the service. The declaration that
24 this was without reproach to him did not alter the effect of the act. Such a declaration has not been unusual in the case of removal of a civil officer; but cannot be understood as qualifying the act. Therefore no credit can be allowed to the defendant for pay or emoluments accruing after 24th March, 1845."

To which instruction the defendant's counsel excepted.

The court further instructed the jury that the defendant was, from 1 July, 1836, until 24th March, 1845, in the military service of the United States as a first lieutenant of dragoons or cavalry; and that he is en-

titled as such to credit for the pay and emoluments accrued during this period.

To which instruction the counsel for the plaintiff excepted.

The court added that as this credit was admitted to exceed the whole of the plaintiff's demand, the verdict should be for the defendant.

25 The defendant's counsel requested the court to instruct the jury as in the following eight points:

"If the jury find the *the* entry and announcement that the defendant had resigned his commission as first lieutenant was a fraud in fact upon his rights or an error; and that he did not in fact resign his commission of first lieutenant, then the official announcement of the same is void, and his commission issued to him entitles him to pay as first lieutenant.

"2. If the jury find that the defendant tendered a resignation as 2nd lieutenant, which was accepted on 23 June, 1836, or before the order 43 of 28 June, 1836, to take effect July 31, 1836, while the letter of resignation fixed the 31st October, 1836, to which time leave of absence had been granted to him, it could not come under the order 43 to alter the time to 30 days, as that order was unknown at the time of the

26 tender and acceptance; and that the resignation as tendered never was, in fact, accepted, and could not legally be made to apply to another commission issued subsequent to such acceptance.

"3. That the issue of the commission as first lieutenant, on 1st July, 1836, by the President of the United States, was a waiver of all right to further proceed on the alleged acceptance of the resignation of the commission as 2nd lieutenant by the United States.

"4. That the defendant's report for duty on July 22, 1836, at the Adjutant General's Office was a compliance with the order 43, and vacated the right to proceed on the alleged letter of resignation.

"5. That the defendant as well as the plaintiff is entitled to a finding of the credits at your hands, by stated amounts, by which the court may enter judgment. Your finding to be in the form of a special verdict.

27 "6. That the Army Register is simply a piece of internal machinery of the department, and the insertion or arrangement of names on it, whether correctly printed or needing correction, and orders in relation to it, are not orders of dismissal from the service nor a vacation of outstanding commissions.

"7. It is not the practice nor lawful to dismiss officers from the service, except upon trial by court-martial and approval of the sentence. This is intended to apply to officers commissioned by and with the advice and consent of the Senate. There must be a trial and sentence by court-martial, and order of approval and dismissal by the President.

"8. That the order of 24 March, 1845, as the act of President Polk, was not a dismissal from the service of the United States."

On the points numbered 1 to 4, inclusive, the court having al-

28 ready instructed the jury to find for the defendant', considers it unnecessary to give the instructions asked under these heads, and declines so to do. To which refusal under each head the defendants' counsel excepts.

The fifth instruction asked is refused, except that the court said that if the jury have any doubt of the law of the case they may find a special verdict.

The court refused under the sixth, seventh, and eighth heads to give the instructions requested; and, on the several subjects thereof, repeated the instruction which forms the subject of the defendants' first exception.

The defendants' counsel repeated the request that the jury might be directed or allowed to specify in their verdict the several credits claimed and respectively allowed or disallowed; but the court answered that the jury ought not to be so directed, and recommended to the jury to find simply for the defendant'.

29 To which answer the defendants' counsel excepted.

And thereupon the counsel for the defendants did then and there except to the aforesaid several instructions of the court, as follows, and assigns for error—

"First. Because the learned judge charged the jury, 'The question of the power of the President to dismiss the defendant from the Army is not at this day doubtful. The President had the power, and the question is whether the direction carried into effect the power in this case. The question thus becomes one of mere interpretation. What is the effect of an order of the President erasing the name of an officer from the Army register? Its meaning, I think, is that he was dismissed from the service. The declaration that this was without reproach to him did not alter the effect of the act. Such a declaration has not been unusual in the case of removal of a civil officer, but cannot
30 be understood as qualifying the act.' Therefore no credit can be allowed to the defendant for pay or emoluments accruing after 24th March, 1845.

"Second. Because the learned judge refused to charge the jury as requested on the 5th instruction by the defendants' counsel, and added 'except that if the jury have any doubt of the law of the case they may find a special verdict.'

"Third. Because the learned judge refused under the 6th head to give the instruction requested by defendants' counsel.

"Fourth. Because the learned judge refused under the 7th head to give the instruction requested by the defendants' counsel.

"Fifth. Because the learned judge refused under the 8th head to give the instruction requested by defendants' counsel; and, on the several subjects thereof (of said 6th, 7th, and 8th heads) repeated
31 the instruction which forms the subject of the defendants' first exception.

"Sixth. Because the defendants' counsel repeated the request that the jury might be directed or allowed to specify in their verdict the several credits claimed and respectively allowed or disallowed; but the court answered that the jury ought not to be so directed, and recommended to the jury to find simply for the defendant'."

And inasmuch as said instructions, so excepted to, do not appear of record, the said counsel for the said defendants and said counsel for said plaintiff, respectively, did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the
32 aforesaid judge, at the request of the said counsel for the defendants and the said counsel for said plaintiff, did put his seal to this bill of exceptions pursuant to the aforesaid statute in such case made and provided this day of December, A. D. 1875.

[SEAL.] (Signed) JOHN CADWALADER.

33 EXHIBIT A.

O. G. F., 86.] TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
August 21st, 1874.

Pursuant to the act of Congress approved March 3d, 1817, entitled "An act to provide for the prompt settlement of accounts," I, E. B. French, Second Auditor of the Treasury Department, do hereby certify that the within is a correct transcript from the original on file in this office.

[SEAL.] E. B. FRENCH,
Second Auditor.

W. B. W.

Be it remembered that E. B. French, who certified the annexed transcript, is now, and was at the time of so doing, Second Auditor of the Treasury Department of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof I, B. H. Bristow, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this department, at the city of Washington, this twenty-second day of August, in the year of our Lord one thou-
34 sand eight hundred and seventy-four.

[SEAL.] B. H. BRISTOW,
Secretary of the Treasury.

W. O. D.

35 *The United States in account-current with Jas. W. Schaumburg, paymaster in the Army of the United States.*

DR.		CR.	
1861.		1861.	
Oct. 31. To amount expended in paying the troops from Oct. 1, 1861, the date of last account rendered to November 1, 1861, as per abstract and vouchers herewith	51,508 14	" By balance to be accounted for as stated in last account-current of this date—	
Balance due United States to be rendered in next account	7,043 86	Oct. 14. " cash received of Paymaster, D. H. McPhail	43,552 00
		" 30. " cash received of Paymaster D. H. McPhail	15,000 00
Total	58,552 00	Total	58,552 00

I certify that the above is a true account of all public moneys received by me not heretofore accounted for, and that the disbursements have been faithfully made.

Stated at Wheeling, Va., this 8th day of November, 1861.

JAS. W. SCHAUMBURG,
Paymaster, U. S. A.

36 *The United States in account-current with Jas. W. Schaumburg, paymaster in the Army of the United States.*

Dr.			Cr.	
1861.			1861.	
Nov. 30. To amount expended in paying the troops from November 1, '61, the date of last account rendered to December 1st, 1861, as per abstract and vouchers herewith		40,206 37	" " By balance to be accounted for as stated in last account-current of this date	7,043 86
Balance due United States to be rendered in next account		4,837 49	" 2. " cash received of Paymaster D. H. McPhail	2,000 00
			" 23. " cash received of Paymaster D. H. McPhail	36,000 00
Total		45,043 86	Total	45,043 86

I certify that the above is a true account of all public moneys received by me not heretofore accounted for, and that the disbursements have been faithfully made.
Stated at Wheeling, Va., this 4th December, 1861.

JAS. W. SCHAUMBURG,
Paymaster.

37 *The United States in account-current with Jas. W. Schaumburg, paymaster in the Army of the United States.*

Dr.			Cr.	
1862.			1861.	
Jan'y 2. To amount expended in paying the troops from Nov. 30, 1861, the date of last account rendered, to January 1, 1862, as per abstract and vouchers herewith		1,092 27	Dec. 3. By balance to be accounted for as stated in last account current of this date	4,837 49
Pay of volunteer		42,714 45	" 14. " cash received of D. H. McPhail, paymaster, U. S. A.	40,000 00
Balance due the United States to be rendered in next account		1,030 77		
Total		44,837 49	Total	44,837 29

I certify that the above is a true account of all public moneys received by me not heretofore accounted for, and that the disbursements have been faithfully made.
Stated at Wheeling, Va., this 2nd day of January, 1862.

JAS. W. SCHAUMBURG,
P. M., U. S. A.

38 *The United States in account current with Jas. W. Schaumburg, paymaster in the Army of the United States.*

Dr.			Cr.	
1862.			1862.	
M'ch 15. To amount expended in paying the troops from Decr. 31, 1861, the date of last account rendered to Mch. 15th, 1862, as per abstract and vouchers of this date	2,107 00		Jany. 2d. By balance to be accounted for as stated in last account current of this date	1,037 77
" " " turned over to paymasters	223 77		Feby. 11. " cash received of Maj. Philip Pendleton, P. M., U. S. A.	500 00
Balance due the United States			Mch. 6. " cash received of Maj. Philip Pendleton, P. M., U. S. A.	800 00
Total	2,330 77		Total	2,330 77

I certify that the abv. is a true account of all public moneys received by me not heretofore accounted for, and that the disbursements have been faithfully made.
Stated at Philadelphia, this 22nd day of March, 1862.

JAS. W. SCHAUMBURG,
P. M., U. S. A.

39 No. 7115.] TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
June 9th, 1862.

I certify that I have examined and adjusted the account of James W. Schaumburg, A. P. M., and find that he is charged as follows:

To D. H. McPhail, A. P. M., am't rec'd of him,						Oct.	14th, 1861.	15,000 00
" D. H. McPhail,	"	"	"	"	"		14th, "	43,552 00
" D. H. McPhail,	"	"	"	"	Nov.		2nd, "	2,000 00
" D. H. McPhail,	"	"	"	"	"		23d, "	36,000 00
								96,552 00

And he is entitled to credit as follows:

By appro. am't disbursed from Feb'y 28th, 1861, to Oct. 31, 1861, as per gen'l abstract	86,345 75
Leaving an aggregate balance due the United States of	10,206 25

Under the following appropriations:

Due the United States:			
Pay of the army		6,238 61	
Subsistence of officers		2,784 90	
Forage		928 00	
Pay in lieu clothing to officers' servants		990 25	
		10,941 76	
Due the paymaster:			
Pay in lieu clothing to disch'd soldiers	76 63		
Medical & hospital department	43 00		
Pay of 2 & 3 years' volunteers	615 88	735 51	10,206 25

As appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

E. B. FRENCH,
Second Auditor.

To the SECOND COMPTROLLER OF THE TREASURY.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance this 25th day of July, 1862.

J. MADISON CUTTS,
Second Comptroller.

40 No. 8363.] TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
September 1st, 1862.

I certify that I have examined and adjusted the account of James W. Schaumburg, A. P. M., and find that he is charged and chargeable as follows:

1862.			
July 25. To balance No. 7115			10,206 25
" Dan'l H. McPhail, A. P. M., received of him December 3d, 1861			40,000 09
" P. Pendleton, A. P. M., received of him Feb'y 11th, 1862			500 00
" P. Pendleton, A. P. M., received of him March 6th, 1862			800 00
			51,506 25

And is entitled to credit as follows:

By appropriation, am't disbursed by him from December 1st, 1861, to March 31, 1862			29,606 89
Leaving an aggregate balance due the United States of			21,899 36

Under the following appropriation:

Due the United States:			
Pay of the army		5,687 44	
Subsistence of officers		2,413 35	
Forage		780 28	
Pay in lieu of clothing officers' servants		968 42	
Pay of 2 and 3 years' volunteers		12,169 50	
Due the paymaster		22,018 99	
Pay in lieu clo. dis'd sold's	76 63		
Medical hospital	43 00	119 63	21 899 36

As appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

E. B. FRENCH,
Second Auditor.

To the SECOND COMPTROLLER OF THE TREASURY.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance this 18th day of November, 1862.

J. MADISON CUTTS,
Second Comptroller.

41 No. 2015.] TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
April 1st, 1871.

I certify that I have examined and adjusted the account of Maj. James W. Schaumburg, A. P. M., U. S. A., and find that he is charged as follows:

Final settlement.

1862.

Nov. 18. To balance No. 8363			21,899 36
And is entitled to credit as follows:			
By appropriation:			
Amount of suspensions in previous settlement now removed	21,476 07		
" appropriation:			
Amount of suspensions in previous settlement now removed under relief act of March 16, 1868	132 62	21,608 69	
Leaving an aggregate balance due United States of			290 67

Under appropripation, pay of 2 & 3 years' volunteers, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

E. B. FRENCH,
Second Auditor.

To the SECOND COMPTROLLER OF THE TREASURY.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance this fourth day of April, 1871.

J. M. BRODHEAD,
Second Comptroller.

42 No. 2166.] TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
July 1st, 1871.

I certify that I have examined and adjusted the account of James W. Schaumburg, late A. P. M., U. S. A., and find that he is charged and chargeable as follows:

Final settlement.

1871.

April 4. To balance, No. 2015		290 67
By appropriation:		
For amount of suspensions removed under relief act of March 16th, 1868 (see sett. 2015), acknowledged as having collected (see his statement of May 30th, 1871, filed herewith)	15 33	
Leaving a balance due the United States of, under appropriation of pay of 2 & 3 years' vol's		306 20

As appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

E. B. FRENCH,
Second Auditor.

To the SECOND COMPTROLLER OF THE TREASURY.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance this sixth day of July, 1871.

J. M. BRODHEAD,
Second Comptroller.

43 EXHIBIT A.

[Form No. 68.]

O. A. F., 86.]

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
August 21st, 1874.

I hereby certify that it appears from the records of this office, of which I am the legal custodian, that the annexed papers are correct copies of the originals on file in this office.

[SEAL.]

E. B. FRENCH,
Second Auditor U. S. Treasury.

W. B. M.
W. D. A.

Be it known that E. B. French, who certified the foregoing, is now, and was at the time of so doing, Second Auditor of the Treasury
44 of the United States, and the legal custodian of the records of the Second Auditor's Office, and full faith and credit are due his official attestations.

In testimony whereof I, B. H. Bristow, Secretary of the Treasury of the United States, have hereunto set my hand and caused to be affixed the seal of the Treasury Department of the city of Washington, in the District of Columbia, this 22nd day of August, in the year A. D. 1874.

[SEAL: THESAUR. HMER. SEPTENT. SIGIL.] B. H. BRISTOW,
Secretary of the Treasury.

45 PAY DEPARTMENT U. S. ARMY,
Wheeling, Va., Nov. 2nd, 1871.

Received of Maj. D. H. McPhail two thousand dollars and cents, being on account of 2 and 3 years , which sum I have passed to the credit of the United States, and hold myself accountable at the Treasury on the following appropriations, viz:

Pay	$
Subsistence	
Forage	
Clothing of servants	
Clothing of soldiers	
Total amount	$2,000 00

JAMES W. SCHAUMBURG,
A. P. M., U. S. A.

Signed duplicates.

46 PAY DEPARTMENT U. S. ARMY,
Wheeling, Va., Nov. 23d, 1861.

Received of Maj. D. H. McPhail, A. P. M., thirty-six thousand dollars and cents, being on account of 2 and 3 years vols., which sum I have passed to the credit of the United States, and hold myself accountable at the Treasury on the following appropriations, viz:

Pay	$
Subsistence	
Forage	
Clothing of servants	
Clothing of soldiers	
Total amount	$36,000 00

(Signed duplicates.)

JAMES W. SCHAUMBURG,
A. P. M., U. S. A.

47 PAY DEPARTMENT U. S. ARMY,
Wheeling, Va., Decr. 14, 1861.

Received of Maj. D. H. McPhail, A. P. M., forty thousand dollars cents, being on account of , which sum I have passed to the credit of the United States, and hold myself accountable at the Treasury on the following appropriations, viz:

Pay	$
Subsistence	
Forage	
Clothing for servants	
Clothing for soldiers	
Total amount	40,000 00

(Signed duplicates.)

JAS. W. SCHAUMBURG,
A. P. M., U. S. A.

48 PAY DEPARTMENT, U. S. ARMY,
Wheeling, Va., Oct. 30, 1861.

Received of Maj. D. H. McPhail, A. P. M., fifteen thousand dollars and cents, being on account of 2 and 3 years' vol's, which sum I have passed to the credit of the United States and hold myself accountable at the Treasury on the following appropriations, viz:

Pay	$
Subsistence	
Forage	
Clothing of servants	
Clothing of soldiers	
Total amount	$15,000

JAS. W. SCHAUMBURG,
A. P. M., U. S. A.

igned duplicates.)

49 PAY DEPARTMENT OF U. S. ARMY,
Wheeling, Va., Oct. 14, 1861.

Received of Maj. D. H. McPhail, A. P. M., forty-three thousand five hundred & fifty-two dollars and cents, being on account of pay of 2 & 3 years' vol's, which sum I have passed to the credit of the United States, and hold myself accountable at the Treasury on the following appropriations, viz:

Pay	$
Subsistence	
Forage	
Clothing of servants	
Clothing of soldiers	
Total amount	$43,552 00

JAS. W. SCHAUMBURG,
A. P. M., U. S. A.

(Signed duplicates.)

50 PAY DEPARTMENT U. S. ARMY.
Wheeling, Va., Feb'y 11*th*, 1862.

Received of Maj. P. Pendleton, A. P. M., six hundred dollars and cents, being on account of 2 & 3 years' volunteers, which sum I have passed to the credit of the United States and hold myself accountable at the Treasury on the following appropriations, viz:

Pay	$
Subsistence	
Forage	
Clothing for servants	
Clothing for soldiers	
Total amount	$600

JAS. W. SCHAUMBURG,
A. P. M., U. S. A.

(Signed duplicates.)

51 PAY DEPARTMENT, U. S. ARMY,
Washington, D. C., M'ch 6, 1862.

Received of Maj. P. Pendleton, A. P. M., eight hundred dollars and cents, being on account of 2 & 3 years' vol's, which sum I have passed to the credit of the United States and hold myself accountable at the Treasury on the following appropriations, viz:

Pay	$
Subsistence	
Forage	
Clothing for servants	
Clothing for soldiers	
Total amount	$800

JAS. W. SCHAUMBURG, *A. P. M.*

(Signed duplicates.)

52 *Statement of differences remaining on final settlements of the account of James W. Schaumburg, add'l paymaster, U. S. Army, from April* 18*th*, 1861, *to March* 30*th*, 1862.

Ballance due the United States as per official statement	306 20
" " his acc't current	000 00
Difference	306 20

Accounted for as follows:

Settlement No. 7115, confirmed July 25, '61.

Nov. 18.	Pay-roll of Co. C, 5th Ohio Vol's, over added	62 63
" 24.	" " " " E, 4th U. S. A. " " "	2 09
" 26.	" " " " H, 5 Ohio " " "	37
" 34.	" " " " A, 5 " " " "	2 00
	Add amount charged by paymaster on his account current dated March 22d, 1862, as turned over to paymaster (no name given) disallowed	223 77
		290 77
	Less 49 short added	10
		290 67
53	Add amount of suspensions heretofore removed, acknowledged by paymaster as having been collected as per his statement of May 30th, 1871	15 53
		306 20

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
July 1, 1871.
HENRY KRANSKOPE,
"87"

TREASURY DEPARTMENT,
SECOND COMP'T'S OFFICE,
July, 1871.
J. Q. ADAMS.

54 EXHIBIT B.

Credits claimed by defendant on the trial.

Longevity rations as paymaster, from 5th September to 12th March, 1861—187 days, at 30 cts. per ration, 5 per day, $1.50 per day	$280 50
Credit of pay, rations, &c., as first lieutenant, from 1st August, 1836, to 15th July, 1870, as per account demanded and refused	$69,261 80
Deduct pay as paymaster, &c., on such account as demanded	1,121 01
	$68,140 70
Of this sum there was due from 1st August, 1836, to 24th March, 1845	$10,548 75
And from 24th March, 1845, to 15th July, 1870	57,591 95
	$68,140 70

Certificate of the Secretary of War attached to Exhibits C & D.

UNITED STATES OF AMERICA, WAR DEPARTMENT,
Washington City, May 15th, 1875.

Pursuant to the act of Congress of the 22d February, 1849, I, William W. Belknap, Secretary of War, do hereby certify that the annexed documents are true copies from the records in this department.

In witness whereof I have hereunto set my hand and caused the seal of the War Department to be affixed on the day and year first above written.

[SEAL.] WM. W. BELKNAP,
Secretary of War.

55 EXHIBIT C.

Commission of second lieutenant.

The President of the United States of America to all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of James W. Schaumburg I have nominated, and, by and with the advice and consent of the Senate, do appoint him second lieutenant in the regiment of dragoons, in the service of the United States, to rank as such from the nineteenth day of September, eighteen hundred and thirty-three. He is therefore carefully and diligently to discharge the duty of second lieutenant by doing and performing all manner of things thereunto belonging. And I do strictly charge and require all officers and soldiers under his command to be obedient to his orders as second lieutenant. And he is to observe and follow such orders and directions from time to time as he shall receive from me, or the future President of the United States of America, or the general, or other superior officers set over him, according to the rules and discipline of war. This commission to continue in force during the pleasure of the President of the United States for the time being.*

Given under my hand at the city of Washington, this tenth day of May, in the year of our Lord one thousand eight hundred and thirty-four, and in the fifty-eighth year of the Independence of the United States.

(Signed) ANDREW JACKSON.

By the President:
(Signed) LEW. CASS,
Secretary of War.

Recorded volume 7, page 547, Adjutant-General's Office, May 10, 1834.

(Signed) R. JONES,
Adjutant-General.

Official copy.
J. C. KELTON,
Asst. Adj.-General.

A. G. OFFICE, *Feb.* 5, 1870.

* This sentence is without authority of law. The Constitution simply says (article II, section 4) the President "shall commission all the officers of the United States." But no form of commission has ever been prescribed. The one in use is a copy of the British commission, mutatis mutandis. De Hart's Military Law, 242. The power of the President to dismiss cannot be predicated of a clause which the President sees fit to insert in the form of commission which he adopts to carry out the power conferred upon him by the Constitution.

(Endorsement:) Commission of Jas. W. Schaumburg as second lieutenant, issued 4th May, 1834. To rank from 17th Sept'r, 1833. (Certified copy.)

56 EXHIBIT D.

Commission as first lieutenant.

The President of the United States of America to all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of James W. Schaumburg, I have nominated, and, by and with the advice and consent of the Senate, do appoint him first lieutenant in the regiment of dragoons, in the service of the United States, to rank as such from the first day of March, eighteen hundred and thirty-six. He is therefore carefully and diligently to discharge the duty of first lieutenant by doing and performing all manner of things thereunto belonging. And I do strictly charge and require all officers and soldiers under his command, to be obedient to his orders as first lieutenant. And he is to observe and follow such orders and directions, from time to time, as he shall receive from me or the future President of the United States of America, or the general, or other superior officers set over him, according to the rules and discipline of war. This commission to continue in force during the pleasure of the President of the United States, for the time being.

Given under my hand, at the city of Washington, this first day of July, in the year of our Lord one thousand eight hundred and thirty-six, and in the sixtieth year of the Independence of the United States.

By the President:

(Signed) ANDREW JACKSON.

(Signed) LEW. CASS,
Secretary of War.

True copy from the records of the Adjutant-General's office.

W. G. FREEMAN,
Asst. Adt.-Genl.

ADJUTANT-GENERAL'S OFFICE,
October 30, 1846.

(Endorsement:) Commission of 1st Lieut. Jas. W. Schaumburg. Issued 1st July, 1836. To take rank from the 1st March, 1836. (Certified copy.)

Certificate of the Secretary of War attached to the 23 following exhibits marked E.

UNITED STATES OF AMERICA, WAR DEPARTMENT,
Washington City, May 15th, 1875.

Pursuant to the act of Congress of the 22d of February, 1849, I, William W. Belknap, Secretary of War, do hereby certify that the annexed papers are true copies of, and extracts from, original papers and the records in this department.

In witness whereof, I have hereunto set my hand, and caused the seal of the War Department to be affixed, on the day and year first above written.

[SEAL.] WM. W. BELKNAP,
Secretary of War.

57 EXHIBIT E.

WAR DEPARTMENT,
March 28th, 1833.

SIR: You are hereby informed that on this day the President of the United States, appointed you a second lieutenant in the Battalion of Mounted Rangers. Should the Senate, at its next session, advise and consent thereto, you will be commissioned accordingly.

You will immediately, on receipt hereof, please to communicate to this department, through the Adjutant-General's office, your acceptance or non-acceptance of said appointment; and in case of accepting, you will report yourself in person to Captain Beeker, at Cantonment Johnson, near Danville, in Illinois.

LEW. CASS,
Secretary of War.

Second Lieutenant JAMES W. SCHAUMBURG,
Washington City.

58 EXHIBIT E.

Letter tendering resignation.

FORT DES MOINES, *June 6th*, 1836.

SIR: I herein desire that my resignation as 2d lieut. of the U. S. Regt. of Dragoons be accepted, to take effect the 31st of October, 1836.

I have the honor to remain, very respectfully, your obedient servant,
JAS. W. SCHAUMBURG,
2d Lieut. U. S. Dragoons.

Hon. LEW. CASS,
Secretary of War, Washington, D. C.

59 EXHIBIT E.

Letter of Lieutenant Schaumburg to General Macomb, covering his resignation.

FORT DES MOINES, *June 6th*, 1836.

SIR: I have been compelled by urgent necessity of my presence in New Orleans to hand to Capt. Sumner, commanding this post, my resignation as an officer of the U. S. Regt. of Dragoons. I do so unwillingly, inasmuch as I shall leave my regiment whilst in arrest and charges against me, which I shall regret if I am denied a trial before my resignation is accepted, which I must here respectfully request will be afforded me. I leave here forthwith for New Orleans, where any communication with which you may honor me will be received.

I have the honor to remain, very respectfully, your obedient servant,
JAS. W. SCHAUMBURG,
2d Lieut. U. S. Regt. Dragoons.

Major-Gen'l A. MACOMB,
Commander-in-Chief U. S. Army, Washington, D. C.

(Endorsement:) Fort Des Moines, June 6th, 1836. Jas. W. Schaumburg, 2d Lt. U. S. Dragoons. Official letter to Major-Gen'l Macomb-subject of tender of resignation. Submitted to the Gen'l. R. J. Recommended to be accepted, and to take effect 31st July, 1836. A. Macomb, M. G. June 23, 1836. Approved. L. C.

60 EXHIBIT E.

FORT DES MOINES,
June 6, 1836.

D'R SIR: I have received and forwarded to the Adj't Gen'l the resignation of Lt. Schaumburg, to take effect on the 31st of October next. He has applied for a trial, and at his earnest request I have recommended that this application may be granted, but whether he is tried or not, his resignation will take effect on the 31st of October. I have given him permission to leave the post, subject to the approval of Gen'l Atkinson.

* * * * * * *

Very truly, yours,

E. V. SUMNER,
Capt. Dragoon.

To Lt. Col. KEARNEY.

61 EXHIBIT E.

SAINT LOUIS, MISSOURI,
June 11th, 1836.

SIR: After my leaving Fort Des Moines, Lieut. Schaumburg, being under arrest, obtained permission from Capt. Sumner to leave there, by tendering his resignation. I most truly hope he will not be permitted to recall it. He has gone to New Orleans.

* * * * * * *

Very respectfully, your ob. serv't,

S. W. KEARNEY,
Lieut. Col. Drag's, Com'g Reg't.

Brig. Gen'l R. JONES,
Adj't Gen'l U. S. Army, W'n.

62 EXHIBIT E.

[General Order No. 43.]

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
Washington, June 28th, 1836.

* * * * * * *

V. "A due regard to the public interest and the good of the service no longer justify the practice of granting long leaves of absence on the acceptance of the resignations of officers of the Army. Indulgences ought not to be expected, nor can they be accorded to an officer, when the public interest may be concerned, and his presence or the performance of duty be necessary."

The President accordingly has been pleased to direct that—

1. "In time of active service, and the employment of the Army in the field, as is now the case in Florida and elsewhere, if the resignation of any officer be accepted, it shall take effect within thirty days from the date of the order of acceptance, and the vacancy be immediately filled by the next officer entitled to promotion, who will forthwith proceed to the station of the officer resigned, and there relieve him in his duties.

2. "All officers now absent on leave, with a view of quitting the Army, and whose resignations have been so far accepted as to have

been permitted to take effect at some prospective date, are hereby required, at the expiration of three months from the date of the order of acceptance, either to resume their duties as officers of the Army or then vacate their commissions. If any officer choose the former, and join his regiment or corps, his resignation may be considered as cancelled. The officers so absent will make their election, and report to the Adjutant-General accordingly."

VI. In conformity with the 2d paragraph of the foregoing regulations, leaves of absence, heretofore granted with a view of retiring from service, for any period exceeding three months, are hereby countermanded; and any officer so absent will immediately report for duty, or consider his resignation as taking effect from this date. The same rule will apply to other officers now absent under like circumstances of prospective resignation at the expiration of three months, computing the time from the date of the official notification of acceptance.

VII. The practice of commanding officers assuming authority to grant leaves of absence to officers on tendering their resignations is disapproved, it being contrary to the rules of service. Letters of resignation, hereafter, will be forwarded to the Adjutant-General, for decision, at the War Department.

By order of Major-General Macomb.

R. JONES,
Adjutant-General.

63 EXHIBIT E.

[General Order No. 44.]

ADJUTANT-GENERAL'S OFFICE,
Washington, June 30th, 1836.

The following resignations have been accepted by the President, to take effect at the dates set opposite their respective names, to wit:

First Lieutenant J. W. Schaumburg, 1st Dragoons, 31st July, 1836.

Brevet 2d Lieutenant R. King, Corps of Engineers, 30th September, 1836.

Brevet 2d Lieutenant A. V. Brumley, 1st Artillery, 30th June, 1836.

By order of Major-General Macomb.

R. JONES,
Adjutant-General.

64 EXHIBIT E.

[General Order No. 46.]

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, July 6th, 1836.

Promotions and appointments in the Army since the first of January, 1836

1.—PROMOTIONS.

* * * * * * *

FIRST REGIMENT OF DRAGOONS.

Lieut. Col. Stephen W. Kearny, to be colonel; 4th July, 1836; vice Dodge appointed governor of the Territory of Wisconsin.

Major Richard B. Mason, to be lieut. colonel; 4th July, 1836; vice Kearny promoted.

Captain Clifton Wharton, to be major; 4th July, 1836; vice Mason promoted.

1st Lieut. Isaac P. Simonton, to be captain; 4th July, 1836; vice Wharton promoted.

2d Lieut. J. W. Schaumburg, to be 1st lieut.; 1st March, 1836; vice Noland resigned.

2d Lieut. Enoch Steen, to be 1st lieut.; 5th March, 1836; vice Izard deceased.

2d Lieut. Burdett A. Terrett, to be 1st lieut.; 31st March, 1836; vice Lupton resigned.

2d Lieut. Wm. Eustis, to be 1st lieut.; 15th June, 1836; vice Wheelock deceased.

2d Lieut. Lucius B. Northrop, to be 1st lieut.; 4th July, 1836; vice Simonton promoted.

Brevet 2d Lieut. Alexander S. Macomb, to be 2d lieut.; 1st March, 1836; vice Schaumburg promoted (bvt. 1st July, 1835).

* * * * * * *

By order of Major-General Macomb.

R. JONES,
Adjutant-General.

65 EXHIBIT E.

Extract from report-book of War Department, showing Lt. Schaumburg's report for duty in obedience to order No. 43.

Report book.					REMARKS. The officer will set opposite the record of his name the occasion of his presence, and the number of the order authorizing it will be specified.	
Date of arrival.	Names.	Rank.	Regiment.	Lodgings.	Date of departure.	
1836. 22d July.	Jas. W. Schaumburg.	2d lieutenant.	1st Dragoons.	Fuller's.		On leave of absence and report for duty in obedience to general order 43.

66 EXHIBIT E.

Letter from J. W. Schaumburg to General Lewis Cass, Secretary of War.

WHEELING, W. VA.,
July 12th, 1836.

To Hon. LEW. CASS,
Secretary of War:

SIR: Having just arrived, and been informed of the General Order No. 43, June 28th, 1836, by direction of the President, I hasten to inform you that I wish to have the privilege allowed by the President. Having tendered my resignation under forced circumstances, contrary to my wishes, I am happy to be enabled to continue in the Army of my country in which my father for a long time in the early days had served.

I shall in a few days report in person to the Adjutant-General, as directed by the general order. By this I mean that I withdraw my tender of resignation before its acceptance shall take effect.

I have the honor to remain, very respectfully, your serv't,

JAS. W. SCHAUMBURG,
2d Lieut. Reg't Dragoons, U. S. Army.

67 EXHIBIT E.

Endorsement on letter of September 1, 1839, from James W. Schaumburg to the Secretary of War.

The Adjutant-General respectfully lays before the Secretary of War certain documents written in 1836, with the official numbers "7, 24, 27, 32, 131, 180, & 182," which afford the necessary information in the case of Lieut. Schaumburg, late of the Army.

The President's regulation promulgated in General Orders No. 43, dated June 28, 1836 (see Sec. V & VI), on the subject of leaves of absence, etc., and the alternative then offered the officers whose resignations had been previously accepted, to which Mr. Schaumburg refers, is herewith respectfully submitted. (A.)

The provision of the 2d paragraph of this regulation could not have been applicable to this case, for the resignation was accepted
68 after its adoption in conformity with the limitation prescribed by the 1st paragraph, being an example under the rule. The class of officers that come within the 2d paragraph of the rule embraced only those whose resignations had been previously accepted, & to whom long indulgences had been granted, (as in the case of General Clinch & Captain Thurston, &c.,) that is, before the restriction to thirty days' indulgence provided by the regulation was adopted, which, as stated, was prior to the acceptance of Lieut. Schaumburg's resignation.

Respectfully submitted.

(Signed) R. JONES,
Adjt. Gen'l.

OCTOBER 23D, 1839.

69 EXHIBIT E.

[Extract.]

WASHINGTON, *June 29th*, 1842.

MR. J. W. SCHAUMBURG,
Washington, D. C.:

SIR: * * * The letters of resignation of Captains Porter and Van Ness were received at this office June 23d and 22d, 1836.

Their resignations were never announced in orders, they having been authorized to withdraw them.

In answer to your further inquiry relative to the annunciation of your resignation in 1836, my impression is, though I am not positive, that the fact of acceptance by the Executive was known, and that your letter had been returned from the War Office before the publication of the regulation of June 28, 1836.

I am, sir, very respectfully, your obedient servant,

R. JONES,
Adjutant-General.

70 EXHIBIT E.

Decision of President Tyler.

The claim of Lieutenant Schaumburg to be reinstated in the Army has been duly considered by the President of the United States. On a careful examination of all the facts and circumstances, he is of opinion that Lieut. Schaumburg was entitled to the benefit of the Order No. 43, dated 28th June, 1836, issued by direction of the President, and agreed to accept its terms within the proper time.

The President therefore directs that Lieutenant Schaumburg be restored to the Army on the happening of the first vacancy of captain in the 1st Regiment of Dragoons; and that if prior to the happening of a vacancy in the grade of captains a vacancy shall occur in the grade of first lieutenants, he be placed at the head of the list of first lieutenants, to be promoted to the rank of captain as soon as a vacancy shall occur in that grade; but, as Lieut. Schaumburg has been thrown out of service by his own act of resignation, and considering the decisions of the Secretaries of War heretofore on his case, it is ordered that his pay and emoluments shall only take effect from the time of his restoration to the service by the occurrence of a vacancy.

J. TYLER.

JANUARY 11TH, 1844.

71 EXHIBIT E.

ADJUTANT-GENERAL'S OFFICE,
Washington, March 28, 1845.

SIR: Your letter of yesterday's date has been received and submitted to the General-in-Chief and Secretary of War.

Agreeably to your request, you are informed that you were appointed a second lieutenant of Mounted Rangers March 28th, 1833, and confirmed by the Senate as a second lieutenant of the Regiment of Dragoons May 8th, 1834. The information requested to the third and fifth question will be found in my letter to you of the 25th instant. Copies of certain letters from yourself, which you specify, cannot be given, as the original letters are neither in this office nor that of the Secretary of War, they having been sent to the Senate. But were the originals in the office, I should not feel authorized to take off the clerks from their important business which they are necessarily engaged upon
72 to make such copies, as every person is supposed to retain copies of his own correspondence in which he may have an interest. The three original letters which you requested were never received at this office.

To your fourth, sixth, and seventh inquiries, and the other portions of your letter, an answer cannot be given, except that if it be of any interest to you to be officially informed, I may state that you did not tender your resignation as a first lieutenant, you not having received your promotion at the time your letter of resignation was written, to wit, June 6th, 1836.

I am, sir, very respectfully, your obedient servant,

R. JONES,
Adjutant-General.

J. W. SCHAUMBURG, Esq.,
Washington, D. C.

73 EXHIBIT E.

Letter of Secretary of War in reply to Lieutenant Schaumburg's demand to be informed of the reasons for issuing the above order.

WAR DEPARTMENT,
Washington, March 28th, 1845.

SIR: In reply to your letter of the 26th instant, I have to state that the decision of the President is that you were not, at the time of issuing the order referred to by you, an officer of the Army, and it was not deemed proper that your name should continue as such on the rolls of the War Department. The order of the 24th instant was issued to make the correction.

The single question presented to the consideration of the President was whether you were or were not then an officer of the Army, and it was decided as above stated, on a full consideration of the documents and records of this department.

Very respectfully, your obedient servant,

W. L. MARCY,
Secretary of War.

JAMES W. SCHAUMBURG, Esq.

74 EXHIBIT E.

ADJUTANT GENERAL'S OFFICE,
Washington, November 6, 1845.

Mr. J. W. SCHAUMBURG,
Philadelphia, Penna.:

SIR: Your letter of October 30th has been received, and you are respectfully informed that under the rule of the War Department your request to be furnished with copies of several official letters on file in this office cannot be granted.

As perhaps being sufficient for your purpose, I can state that both Captains G. Porter and D. Van Ness, 1st Artillery, tendered their resignations in the early part of June, 1836, to take effect at prospective dates, which resignations they were permitted to recall under the provisions of "General Orders" No. 43, paragraph 2, dated June 28,
75 1836. Brevet Lieut. Colonel T. Childs, 3rd Artillery, the other officer named by you tendered his resignation in October, 1836, which he was soon after permitted to recall. Paragraph No. 2, of the general order above cited has no reference to the case. If the resignation had been accepted, under paragraph No. 1 but one month's leave could have been granted.

I am, sir, very respectfully, your obedient servant,

L. THOMAS,
Asst. Adjt. Genl.

76 EXHIBIT E.

Endorsement on Senate resolution of March 1, 1850, *in relation to the restoration of James W. Schaumburg to the Army.*

The recent decision of the Senate by the promotion of Lieutenant Ewell to the vacancy created by the resignation of Capt. Eustis renders any action on this resolution unnecessary. Let it be filed in the office of Adjutant General.

June 28th, 1850.

(Signed) G. W. CRAWFORD,
S. of War.

77 EXHIBIT E.

Letter of 36 Senators to President Fillmore, recommending Lieutenant Schaumburg for promotion.

SENATE CHAMBER, *September 26th*, 1850.

To His Excellency MILLARD FILLMORE, *President of the United States:*

SIR: The undersigned beg leave respectfully to recommend to your Excellency to nominate James W. Schaumburg to a captaincy in the Regiment of Dragoons, on the occurrence of the first vacancy in the said regiment. The Senate has twice declared by resolution his right to promotion—once at the last, and again at the present session. It is not the intention of the undersigned to enter here into a detail of the facts connected with Lieutenant Schaumburg's case. A paper containing a full statement of all the circumstances will be laid before your Excellency. Believing that he is entitled to promotion and deserving of it, we earnestly recommend him to you.

With great respect, we subscribe ourselves your Excellency's obedient servants.

JAMES COOPER.
S. W. DOWNS.
D. R. ATCHISON.
DANIEL STURGEON.
JAMES WHITCOMB.
JESSE D. BRIGHT.
GEO. W. JONES, Iowa.
H. S. FOOTE.
JOHN P. HALE.
JOHN WALES.
H. CLAY.
HENRY DODGE.
A. C. DODGE.
M. NORRIS.
J. P. WALKER.
JOHN BELL.
JAMES SHIELDS.
JACKSON MORTON.
W. K. SEBASTIAN.
PIERRE SOULE.
WM. M. GWINN.
LEWIS CASS.
TRUMAN SMITH.
THOS. J. RUSK.
J. C. FREMONT.
W. P. MANGUM.
S. A. DOUGLASS.
ALPHEUS FELCH.
SAM'L HOUSTON.
S. P. CHASE.
H. HAMLIN.
D. S. DICKINSON.
W. R. KING.
ROBT. C. WINTHROP.
J. DAVIS.
R. M. T. HUNTER.

Referred to the Secretary of War, October 8th.

M. F.

78 EXHIBIT E.

ADJUTANT GENERAL'S OFFICE,
Washington, Oct. 21, 1851.

SIR: In reply to your application of the 19th instant, I enclose copies of the "remarks" made by me, May 15, 1849, on your letter to the Secretary of War of May, 1849, also a copy of my letter of August 9, 1849, to the Secretary, asking instructions relative to filling the vacancy of Capt. Eustis, being the only reports I have made in your case for more than three years.

In regard to the Senate's resolution of March 1, 1850, to which you refer, the records do not show that any answer was ever made thereto, and such I understand to have been the fact.

I am, sir, very respectfully, your ob't serv't,

R. JONES,
Adj't Genl.

To J. W. SCHAUMBURG, Esq., *Philadelphia.*

79 EXHIBIT E.

ADJUTANT-GENERAL'S OFFICE,
Washington, May 16th, 1857.

It appears from the records of this office that James W. Shaumburg was the senior 2d lieutenant in the regiment of dragoons on the 16th of June, 1836; was nominated to the Senate for promotion as 1st lieutenant, in the above regiment, June 6th, 1836; was confirmed as such by that body June 15, 1836, and was commissioned by the President of the United States July 1, 1836, to take rank from March 1, 1836.

S. COOPER,
Adjt. General.

80 EXHIBIT E.

WAR DEPARTMENT,
June 11th, 1859.

JAMES W. SCHAUMBURG, Esq.,
Philadelphia:

SIR: The President having referred to this department your letter of the 30th ultimo, with the request that it may be answered, I have to inform you, in reply, that your papers were duly laid before him, but that no decision on the call has yet been communicated to me.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

81 EXHIBIT E.

PHILADELPHIA, PA., *April 24th*, 1861.

To Colonel LORENZO THOMAS,
Adjutant-General U. S. Army,
War Department, Washington, D. C.:

SIR: I have to request you to bring to the notice of the Hon. Secretary of War the order of the 24th of March, 1845, directing my name to be erased from the Official Army Register, the resolution of the Senate of the United States upon which the order was founded, and also the resolution of the Senate of the 2d March, 1849, recommending to the Executive to rescind the said order, which was left by Secretary Marcy unaccorded with and ordered to be placed on file in the Adjutant-General's Office. I anticipate a vacancy that will allow of my being placed in my proper position—that is, a vacancy of field-officer, which will first entitle me to be commissioned as captain from the date Steen was promoted captain, and to be commissioned as major from the date Steen was promoted major. This letter, with the order and resolutions as above, I wish to be presented to the Secretary when a vacancy of major in the Dragoons occurs.

I remain, very respectfully, your obedient servant,
(Signed) JAS. W. SCHAUMBURG,
1st Lieut. 1st Reg't U. S. Dragoons.

82 EXHIBIT E.

PHILADELPHIA, PA., *February 17th*, 1873.

To Hon. WM. W. BELKNAP,
Secretary of War, Washington, D. C.:

SIR: On the 6th of November last I addressed to the Adjutant-Gen-

eral a communication, the same being a particular statement and averment from the record, &c., in my case, showing the official wrong done me; and in doing which the integrity of the records had been violated and vitiated, and so remain to this time, against right and justice and my unceasing protest. I proposed to refer the whole matter to a board of officers to examine into the wrong proceedings against me in the months of June and July, 1836; and the various official proceedings had in my case, following upon the decision and orders of the President in January, 1844, and January, 1845, to wit, the Senate's resolution of March 19th, 1845, and in compliance thereof the General Orders No. 7 of the Secretary of War, of the 24th of the same month, directing my name to be erased from the Official Army Register, which was issued without any notice to me to appear and defend my rights as an officer and citizen, which had been fully recognized and decided by the President on my appeal, and finally adjudicated according to the established rule of the executive department, which could not be disregarded or set aside by any succeeding arbitrary or ex parte executive order.

I requested the Adjutant-General to lay my communication before you for your consideration at the earliest moment; not hearing from him, I now address you to ask to be informed whether my proposition or request for a reference of my allegations to a board of officers, as was done in Drane's case, will be accorded, and if not, that I may the sooner apply to the President for justice under the Constitution and laws, which I am entitled to have, and which has been so long wrongfully denied to me.

I have the honor to remain your obedient servant,

JAS. W. SCHAUMBURG,

Commissioned First Lieutenant 1st Reg't Dragoons, now the 1st Reg't of Cavalry, U. S. Army.

83 *Certificate of the Secretary of War to the following, Exhibit E.*

UNITED STATES OF AMERICA:

WAR DEPARTMENT,

Washington City, May 15, 1875.

Pursuant to the act of Congress of the 22d February, 1849, I, William W. Belknap, Secretary of War, do hereby certify that the annexed paper is a true copy of a copy of a letter embodied in a letter addressed to Major L. Thomas, Ass't & Act'g Adj't Gen'l U. S. Army, Washington, dated Philadelphia, Feb. 3d, 1845, and signed by Jas. W. Schaumburg, as of 1st Reg't U. S. Dragoons, now on file in this department.

In witness whereof I have hereunto set my hand and caused the seal of the War Department to be affixed, on the day and year first above written.

[SEAL.] WM. W. BELKNAP,

Secretary of War.

84 EXHIBIT E.

Letter of President Tyler explanatory of his decision.

WASHINGTON, *January 24th*, 1845.

MY DEAR SIR: In reply to your letter of the 23d inst., I have only to say that, upon a thorough and minute examination of your case and a most patient and elaborate examination of all its facts and circumstances, I came to the conclusion that you had never been properly out of the Army. That you had complied in all things with the spirit and intent of the General Order No. 43, dated 28th June, 1836, and had ac.

cepted its terms, and that yours was not a case for reappointment, but for restoration, or, more plainly to speak, of recognition. You were therefore ordered to be restored to your former rank and recognized (for that is the true meaning of the order) as never having been out of the Army. You were, in my view, fairly to be considered as entitled to the position which you would have occupied if you had been constantly under orders, but as others had in the meantime met with promotion, and, what I must regard as blunders, separated you from the service, I deemed it best to waive all controversy by restoring you to your original rank, and allowing pay for the time designated in my order, coupled with the direction of your nomination for a captaincy upon the first vacancy. This arrangement met with your entire concurrence, so as at the same time to settle both questions of rank and pay. I have not esteemed it necessary, nor can I consider it so, to nominate you for your present rank to the Senate, and this the Secretary of War fully understands.

With sentiments of high respect, yours, &c., &c.,

JOHN TYLER.

Lieut. SCHAUMBURG.

85

EXHIBIT E.

[Page 7 of Official Army Register for 1836.]

Dragoons—Artillery—First Regiment.

No.	Names, rank, and date of commission.	Brevets and former commissions.
6	Edward Harding, 30 May, 32	
7	Alfred Mordecai, 30 May,	
8	Benjamin Huger, 30 May,	
9	J. A. J. Bradford, 30 May,	
10	G. D. Ramsay, 25 Feb., 35	
	REGIMENT OF DRAGOONS.	
	Colonel.	
1	Henry Dodge, 4 Mar., 33	
	Lieutenant-colonel.	
1	S. W. Kearny, 4 Mar., 33	
	Major.	
1	R. B. Mason, 4 Mar., 33	Bvt., 31 July, 29
	Captains.	
1	C. Wharton, 4 Mar., 33	Capt., 22 April, 30
2	E. V. Sumner, 4 Mar.,	
3	E. Trenor, 4 Mar.,	
4	David Hunter, 4 Mar.,	
5	Lemuel Ford, 15 Aug.,	
6	Nath. Boone, 15 Aug.,	
7	J. B. Browne, 15 Aug.,	
8	M. Duncan, 15 Aug.,	
9	D. Perkins, 4 Nov.,	
10	P. St. G. Cooke, 31 May, 35	
	First lieutenants.	
1	I. P. Simonton, 4 Mar., 33	
2	A. Van Buren, 4 Mar.,	Aid-de-camp to Maj. Gen. Macomb A. Q. M.
3	James F. Izard, 4 Mar.,	
4	L. P. Lupton, 4 Mar.,	
5	Thomas Swords, 4 Mar.,	
6	T. B. Wheelock, 19 Sept.,	
7	B. D. Moore, 19 Sept.,	
8	C. F. M. Noland, 19 Sept.,	
9	James Allen, 31 May, 35	
10	J. H. K. Burgwin, 30 June,	
11	J. S. Van Derveer, 15 Aug.,	

No.	Names, rank, and date of commission.	Brevets and former commissions.
	Second lieutenants.	
1	A. M. Lee, 4 Mar., 33	Bvt., 1 July, 31
2	J. W. SCHAUMBURG, 19 Sept.,	
3	Enoch Steen, 19 Sept.,	
4	B. A. Terret, 7 Nov.,	
5	Wm. Eustis, 17 Mar., 34	Bvt., 1 July, 30
6	L. B. Northrop, 21 July,	Bvt., 1 July, 31
7	G. P. Kingsbury, 31 May, 35	Bvt., 1 July, 32
8	J. M. Bowman, 30 June,	Bvt., 1 July,
9	Asbury Ury 30 June,	Bvt., 1 July,
10	Henry Turner, 15 Aug.,	Bvt., 1 July, 34
	J. H. Martindale, 1 July, 35	Bvt.
	A. S. Macomb, 1 July,	Bvt.
	J. H. Hanly, 1 July,	Bvt.
	A. R. Johnston, 1 July,	Bvt.
	P. R. Thompson, 1 July,	Bvt.
	B. S. Roberts, 1 July,	Bvt.
	Wm. N. Grier, 1 July,	Bvt.
	FIRST REGIMENT OF ARTILLERY.	
	Colonel.	
1	A. Eustis. 17 Nov., 1834	B.G. bvt., 30 June, 34
	Lieutenant-colonel.	
1	J. B. Walbach. 30 May, 32	Col. bvt.. 1 May, 25
	Major.	
1	Wm. Gates, 30 May, 32	Bvt., 3 Mar., 23
	Captains.	
1	Milo Mason, 17 May, 16	Maj. bvt., 17 May, 26
2	F. Whiting, 10 Sept., 19	Maj. bvt., 10 Sept., 29
3	H. Saunders, 4 Nov., 23	Maj. bvt., 4 Nov., 33
4	R. M. Kirby, 5 Aug., 24	Maj. bvt., 17 Sept., 24
5	Giles Porter, 30 Sept., 33	Bvt., 1 Feb., 33
6	D. Van Ness, 23 Oct., 31	Bvt., 4 Nov.,
7	Justin Dimick, 6 April, 35	Bvt., 1 May, 34
8	Lemuel Gates, 1 Oct.,	
9	D. D. Tompkins, 31 Dec.,	

86 EXHIBIT F.

Copy of letter from J. W. Schaumburg to General Macomb, from St. Louis, Mo.

SAINT LOUIS, MO., *June 10th*, 1836.

To Major-General A. MACOMB,
Commanding U. S. Army, Washington, D. C.:

GENERAL: I was compelled to write a tender of resignation of my commission as a second lieutenant of the Regiment of Dragoons, to be forwarded to the department by Captain E. V. Sumner, who was left in command of the post by Lt. Col. Kearny, who is to command the regiment at Fort Leavenworth. He left me in arrest, refusing to allow me to go to New Orleans on leave of absence granted to me by you, as endorsed on my application by the Adjutant-General, asking for leave, &c., but it was left to Lt. Col. Kearny, or commanding officer, to let me go or not. This gave to Lt. Col. Kearny an opportunity to exhibit his contemptible malice against me by sending to me the post-adjutant to inform me that consent was given to me to leave, but that I should not leave the post, and that for making direct application against the regulations, he would make an additional charge against me! I stated in my application, General, that I ventured to make direct application, as I believed that if I had placed in his hands my application his vindictiveness would prompt him not to forward my letter immediately, if at all, whilst he would leave me to believe he did, or that he would have written something prejudicial to my being allowed leave of absence. Lt. Col. Kearny has, in several instances, by his cavalier bearing tried to excite me to act in a way by which he could be able to make some serious charges against me. He placed me in arrest for doing what he a thousand-fold worse has done, and in one case, if I had been or am brought before a court-martial, on his charges, I will present and ask for his trial, and if refused I shall have it brought to the notice of the President. Lt. Col. Kearny, when leaving Fort Des Moines in command of Captain Sumner, anticipating I would apply to the captain to let me go on the leave of absence or furlough, directed him not to permit me to leave unless I tendered my resignation. Captain Sumner was not responsible to Lt. Colonel Kearny, or obliged to conform with his wishes, but he said, when I asked him to let me go, that must needs comply with Lt. Col. Kearny's directions or wishes, as he would soon be the commander of the regiment. To such a reply I could say nothing, but asked the captain if I should write a letter tendering my resignation, embracing the three months' furlough, so as to allow me to go to New Orleans, and to reach Washington before, if the resignation should be accepted, the time for it to take effect, viz., the 31st October, and if he would urge or recommend that my earnest wish to be tried by court-martial on Lt. Col. Kearny's charges. He said, "certainly." I handed my resignation as second lieutenant accompanied by a letter to yourself begging you not to have it accepted or do anything until I got to Washington to explain the difficulties I have had with Lt. Col. Kearny. I have, General, again to ask that you will not have my resignation accepted, as it is the last of my desires to leave the army, but if my resignation should be accepted, and my withdrawal of it be disregarded, I must insist upon a trial upon Lt. Col. Kearny's charges. I

will leave here by the first boat for New Orleans, where please address me on receipt of this.

I remain, with high respect, your obe'nt servant,

JAS. W. SCHAUMBURG,
2d Lieut. Reg't Dragoons, U. S. Army.

P. S.—I will write on my arrival in New Orleans.

87 EXHIBIT G.

Letter from J. W. Schaumburg to General Macomb, from New Orleans, date, June 20th, 1836, reporting his arrival.

To Major-General A. MACOMB,
Commanding U. S. Army, Washington, D. C.:

GENERAL: I have arrived in this city and will remain only so long as the necessity of my presence may be required for the settlement or legal forms demanded in the matter of the estate. I will repair as fast as I can to Washington to fully explain the difficulties I have had with Lt. Col. Kearny, and the circumstances respecting the forced tendering of my resignation, which I have in my letters from Des Moines and St. Louis referred to. I was compelled to hand to Capt. Sumner my letter of resignation, as Lt. Col. Kearny, anticipating that when he should leave the post that I would ask the captain to allow me to leave for three months, as you were kind enough to consent to on my application, but unhappily leaving it to Lt. Col. Kearny's pleasure whether I could leave or not. Of course his pleasure was to refuse. When he left the post, Captain Sumner being in command, I asked him to allow me the furlough you authorized, and he replied that he was very sorry he could not do so, as Lieut. Col. Kearney had enjoined him to not let me go unless on the tender of my resignation. To enable me to discharge a sacred duty I was compelled to make the sacrifice, but hoping that my resignation would not be accepted under the circumstances, and as I stated and requested in my letter accompanying letter of resignation, and now I have again to ask you not to have it accepted, and to consider this as my withdrawal of the tender, as it was only written to enable me to do what my father enjoined upon me in his last moments to do. But if my wishes in that regard be not accorded then I must insist upon having a trial upon Lt. Col. Kearney's charge or charges. If I have committed any serious offense, for the good of the service I should be punished, but if my arrest for eight months and to have been held within the limits of the garrison was necessitated from no serious misconduct upon my part, I presume you would say there is reason for my trial, but if, on the contrary, the course pursued towards me was malicious and without reason I ought to have the benefit of an acquital, and my prosecutor held to answer for his abuse of his authority. I hope, General, you will coincide with these views and give me your approval.

I have to request, General, you to write to me when my letters from Fort Des Moines, 6th instant, are received, and that you have concluded to await my arrival in Washington, or, that if my resignation be not accepted that you will direct me to return to my post and await for a court-martial there.

I have the honor to remain your very obedient servant,

JAS. W. SCHAUMBURG,
2d Lieut. Regiment Dragoons, U. S. A.

88 EXHIBIT H.

Letter from J. W. Schaumburg to General Macomb, from Wheeling.

WHEELING, W. VA.,
July 12th, 1836.

To Major-General MACOMB:

MY DEAR GENERAL: I enclose to you a letter to the Secretary of War, which please hand to him. I arrived here a few hours ago, and was informed that my resignation had been announced, but that the General Order No 43, by direction of the President, would apply to me, and that if I desired to continue in the Army I could do so by reporting for duty. I shall be in Washington in a few days—as I must stop a while to see my family—to report to you and to comply with the directions of the President and receive orders for service.

I have the honor to remain your very ob. serv.,
JAS. W. SCHAUMBURG,
2d Lieut. Reg't Dragoons, U. S. A.

89 EXHIBIT I.

Copy of protest handed by J. W. Schaumburg to Major-General Macomb.

WASHINGTON, D. C.,
July 23d, 1836.

GENERAL: I have come to the seat of government "to report to the Adjutant-General," in obedience to the 2d paragraph of General Order No. 43, dated June 28th, 1836. I avail myself of the provision of this order of the President offered to officers of the Army whose resignations have been received and accepted before the publication of that order. I have been denied this, and am told that the 2d paragraph does not cover my case, and that my resignation, as accepted and published in General Order No. 44, dated June 30th, 1836, is good against me. I now enter my solemn protest against this proceeding, and deny that the tender of my resignation of second lieutenant to take effect the 31st of October, 1836, has been so accepted, and claim not only the benefit of the 2d paragraph of the President's directions but also to be recognized as a first lieutenant by promotion and confirmation by the Senate, and my commission as such, which I have not resigned.

I am, respectfully, your obt. serv't,
JAMES W. SCHAUMBURG,
1st Lieut. Reg't U. S. Dragoons.

Major-Gen'l A. MACOMB,
Commanding U. S. Army, Headquarters, Washington.

90 EXHIBIT K.

Letter from Ex-President Andrew Jackson to J. W. Schaumburg.

THE HERMITAGE, *June 12th*, 1843.

Lieutenant JAMES W. SCHAUMBURG,
Philadelphia, Pa.:

MY DEAR SIR: I received your letter, with a statement and accompanying documents relating to your having been irregularly put out of the Army. The letter of Senator Dr. Linn urges me to particularly examine all the papers, and as you also desire me to do so, and to write

my opinion of the case, I would have done so before this, but that I have been so feeble, and even now I am suffering much pain, and can write but little at a time; but I must get through with it now I am somewhat better. I am the more induced to do so as I am so much impressed with the great wrong done you by the officials of the War Department.

I first note that you were stationed at Fort Des Moines, on the Upper Mississippi, and that you had learned from your family at New Orleans your father was sick and could not survive many weeks, and you applied to your commanding officer, Lieutenant-Colonel S. W. Kearny, to then allow you to go to New Orleans to visit your good father, fearing he would not live until a leave of absence could be granted and come from Washington. This reasonable request to leave was refused by Lieutenant Colonel Kearny, which was very unfeeling and discreditable to him, as such an indulgence, when no great public necessity forbade your leaving your post, should have been granted. There appears to have been no such obstacle; and therefore the refusal could only have been owing to personal ill-will or a degree of insensibility unbecoming any officer.

The refusal of your commanding officer compelled you to write to Washington for a leave of absence to enable you to go and see your dying parent. Some weeks elapsed before your application was returned. The commanding general endorsed on your application that the leave for three months to go to New Orleans would be granted, providing the commanding officer should deem it proper to allow it. This was no better than a refusal, as it left it to be granted or not to your commanding officer, who had improperly refused you. He did not think it proper to grant it. It appears that Lieutenant-Colonel Kearny had placed you in arrest, though no charges were ever presented against you, and he based his refusal to allow you a furlough because he expected a court-martial would some time or other convene for your trial, and you could not leave. You remained in arrest over eight months; no court was ever ordered for your trial, and no charges were ever written or presented against you, and Lieutenant-Colonel Kearny himself was ordered away from the post, and you still in arrest up to the 6th of June, 1836.

Colonel Kearny having left you at the post under command of Captain E. V. Sumner, Colonel Kearny instructed him (Captain Sumner) to hold you in arrest. After Lieutenant-Colonel Kearny left you applied to Captain Sumner to grant you the leave sent from Washington, which left it to the commanding officer to grant or not. Captain Sumner answered that he could not let you go for the reason that Colonel Kearny had instructed him on leaving not to grant it. This was not creditable to Colonel Kearny, and Captain Sumner being commanding officer of the post was not under Colonel Kearny's orders after he had left to command elsewhere; the responsibility for your presence or absence was not upon Colonel Kearny but upon Captain Sumner, and had he granted you the three months' leave sent from Washington he was not responsible for your absence. Captain Sumner refused to let you go for the reason stated, and finding yourself thus blocked—and, as it strikes my mind forcibly, the purpose aimed to be accomplished was attained—you wrote a letter of resignation on the 6th of June, 1836, to the Secretary of War, requesting the acceptance of your resignation, to take effect the 31st of October following.

91 You were a second lieutenant of the regiment of dragoons.

Accompanying this letter was your letter to General Macomb, general commanding-in-chief, expressing your sincere regret in being thus

obliged, to enable you to go to New Orleans, to write your resignation, the more so as you were in arrest with charges alleged against you, and you expressed an earnst wish that your resignation would not be accepted; at least, not until you had an opportunity to defend yourself before a court-martial. This was as honorable to you as your request was reasonable, and should have been so appreciated by the commanding general. Captain Sumner very properly recommended in his letter to the Adjutant-General, covering your tender of resignation and your letter requesting an investigation, that your earnest request should be granted.

Your reasonable and honorable request, which Captain Sumner, with good feeling, thought should be granted to you, was disregarded, and the time conditioned in your letter for your resignation to take effect, to wit, the 31st October, was shortened, without your consent, full three months, and you were not notified or informed that the time fixed by you should be shortened; and Lieutenant-Colonel Kearny wrote to the Adjutant-General, expressing his most sincere hope that you would not be permitted to withdraw your resignation, which was an impertinent officiousness, as it was from personal feeling against you, and none of his business. The Special Order No. 44, dated 30th June, 1836, says: The following resignations have been accepted by the President, to take effect at the dates set opposite their names, respectively, and your name is given in the list as resigning as first lieutenant, and the date for it to take effect the 31st July, 1836.

The letter you wrote was of your resignation of the office of second lieutenant, and not that of the higher office of first lieutenant, which, as you did not resign, the executive, or "proper authorities," could not have accepted, as stated in the general order. You were some time before entitled to be a first lieutenant, but at the period of writing your resignation you were a second lieutenant, not having been promoted or notified of your promotion. If you had been you would not have written your resignation and signed yourself as a second lieutenant. You conditioned your termination of service to be the 31st of October. One thing or the other, if an officer has a right to specify the time to which his services end, and if the authorities are unwilling to allow the time, it is for them so to acquaint him and say what time would be allowed. If he liked the terms he would agree, and if he did not he would remain; but the authorities have no right to alter the time by an arbitrary order. I would not have permitted such a thing to be done.

An officer's commission in the military service of his country is a vested right which he holds under the laws for the government of the Army and Navy, and cannot be infringed upon. I consider the pretended acceptance of your resignation of your office of second lieutenant as an official misdemeanor, which, had you brought the facts to my knowledge when I was President I would have dismissed the officers who so disgracefully connived at your separation from the Army, as the facts in your case exhibit in the documents before me.

I notice in the Army Register in the list of officers below you
92 in the regiment the name of A. S. Macomb, as a brevet second lieutenant, and that the acceptance, as alleged, of your resignation, advanced that officer, and he is a son of the commanding general, by whose orders the special order, promulgating your resignation, was issued by the Adjutant-General, who should not have obeyed or countenanced the command, as he must have known it was a false proceeding. It appears you went to New Orleans as expeditiously as you could, and made haste to go to Washington to prevent your resignation from being

acted upon. You wrote from St. Louis, New Orleans, and Wheeling, to the Adjutant-General, and to General Macomb, asking not to act upon your resignation; and at Wheeling you wrote to claim the benefit of the President's directions, published in General Order No. 43, dated June 28th, 1836.

This order I remember to have directed the Adjutant-General to issue. It was intended to put a stop to officers resigning on long leaves of absence from service in Florida and elsewhere, and to permit all officers who were, anterior to the date of the order, absent on leave, by tender of resignation, to have the privilege of continuing, by reporting for duty within three months, their resignations should be canceled, and all such as did not elect so to do, their leaves of absence or the time for their resignations to take effect would be shortened to three months from the date of acceptance.

As your resignation was dated on the 6th June, twenty-two days before the date of the order, viz, the 28th June, you were entitled to the privilege expressed in the second paragraph, which referred to all such as had resigned at some date anterior to the date of the order. Your resignation was received, as appears by the Adjutant-General's endorsement, 23d June, which was five days before the date of the order. If this is denied, and the only proof that it was accepted after is the order No. 44, 30th June, in which your name is mentioned as resigning your office of first lieutenant, and as accepted to take effect the 31st of July, dated two days after the Order No. 43, viz, the 30th of June, then it convicts the military officials of the War Department of a premeditated purpose to exclude you from the privilege of the paragraph which was to cover all resignations offered or accepted before the date of the order, and it is clear that the purpose was to exclude you by saying your resignation was comprehended under the prospective paragraph of the Order 43, which could not possibly be so, as the paragraph was notice to all who resigned after the date of the order that their resignation, if accepted, would be accepted to take effect thirty days after the date of acceptance.

Your tender of resignation was twenty-two days before the date of the Order 43, and the excluding you from it under the prospective paragraph was dishonest, and such an act should be severely punished. The integrity of the records of the Adjutant-General's Office by that act against you carries with it a blemish which should be wiped out. It appears that you went to Washington and reported to the Adjutant-General, claiming the benefit of the President's directions contained in the General Order No. 43, and you were answered that your resignation had been accepted, to take effect the 31st July, 1836.

According to the second paragraph of General Order No. 43, you reported in person on the 22d of July. The order allowed to all officers whose resignations had been accepted to take effect at some prospective date, who would "elect" to continue in the service, three months to join their corps or regiment. You went to the General-in-Chief to report yourself, and ask that the matter might be corrected. He answered that nothing could be done. Your resignation was accepted, to take effect as stated in the Special Order No. 44, to wit, the 31st of July, and it could not be canceled.

You protested in writing against this order, and, claiming the benefit of the President's directions, as you had come to report for orders to return to duty, and that the Order 44 was false in saying the President had accepted your resignation of your office of first lieutenant, which you had not resigned, you stated that, as neither the General-in-Chief

nor the Adjutant-General would do anything in the matter, you called on the Secretary of War, and, stating the facts to him, he said you should be righted, but asked you to let the matter rest, as it would be embarrassing to revoke or cancel the Order 44, and that, on the occurrence of a vacancy of first lieutenant, you would be ordered back to your regiment. Upon this assurance of the Secretary of War, General Cass, you went to your home to await a vacancy of first lieutenant and orders thereon.

General Cass left the War Department before a vacancy occurred; at all events, you were not afterward ordered to return to duty. You some time after wrote to Mr. Poinsett, Secretary of War, who succeeded General Cass. He answered you that he could not see any difference in your resignation or the acceptance of it from any ordinary resignation, and, therefore, he could not order your name to be replaced on the Army roll. Mr. Poinsett came to this conclusion by relying upon the Adjutant-General's report of the facts, which does not truly represent the facts of record. If Mr. Poinsett had examined with half an
93 eye the correspondence and the orders he could not have failed to discover the wrong done to you, and a violation of official integrity amounting to dishonesty. Your application failing here, you should have appealed to the President.

Your next application was to Secretary Spencer, Secretary of War, now or lately under the present Chief Magistrate, as appears from your memoranda. Mr. Spencer answered somewhat as Mr. Poinsett, that he considered your resignation as perfect and effectual, as accepted to take effect the 31st of July, and then stultified this assertion by saying you were entitled to be paid as a first lieutenant up to the 31st of October, the period specified in your letter of resignation.

Now, if your resignation, as alleged to have been accepted to take effect the 31st of July, was, as he says, "perfect and effectual," you certainly were not an officer after that date; and not being an officer, you could not receive pay, &c., up to the 31st of October; that is, for three months. If you were entitled to pay, &c., up to the latter date, then you were still in the service, for you could not be in as to pay and out as to commission. So Mr. Spencer's argument or reasoning was mere nonsense, neither agreeing with facts nor logic. Mr. Spencer, as you rightly suspected, acted upon the misrepresentations of the Adjutant-General and prejudicial counseling of General Scott, whose well-known exquisite sense of justice and right is regulated according to his personal inclinings and perverted conceptions.

I have gone through your memoranda and the various documents, and as I progressed my interest was excited, for the case presented in itself so much of wrong—premeditated wrong by high officials—I felt that I should examine it thoroughly with Major Donelson, and I write out my understanding of the matter, notwithstanding I am in constant pain, and have to rest very often; but it is on the side of justice and right I am engaged. You have been very improperly treated, and, had you come to me after General Cass left the War Office, I should have righted you, and punished Macomb, Jones, and Kearny for acting as they did towards you, and the official records been cleared of falsification.

I say you have never ceased to be in the Army. Your resignation amounted to nothing. You did not resign your office of first lieutenant. You were fully entitled to the benefit of my directions published in General Orders No. 43, as you applied for orders under it. You were fairly and justly so entitled, and your constant efforts to have your rights recognized is creditable to you. I hope you will persevere.

If I were President, I would put you back if it made you colonel of the regiment; and I hope President Tyler, to whom you should appeal, will order your reinstatement and promotion to the position your commission as first lieutenant and the laws entitle you to. You are at liberty to show this letter to the President.

I remain, very respectfully, your friend,

ANDREW JACKSON.

94 EXHIBIT L.

PHILADELPHIA, *Feb'y 7th*, 1845.

SIR: I have the honor to address you this to request to be informed whether or not the "question of your (my) nomination is decided," and if considered decided, and my not receiving official information from your office of this, whether I am responsible for continuing absent from my regiment? As I received from the President of the United States, the constitutional commander-in-chief of the armies & navies of the U. States, an official communication explanatory of and declaring what his intentions were in reference to my reinstatement to the Army, viz, that his decision and orders in my case contemplated not an appointment but a continuance, "never having been properly out of the Army," that the true meaning of his decision and orders is that of "recognition" of my title and rights as an officer of the Army, to be
95 restored upon the happening of a vacancy, which would return my name upon the Army Register. That the President did not intend in his decision nor does he consider "it necessary to nominate you (me) to the Senate for your (my) present rank" is clear enough. If the President's communication to me explanatory of his decision and orders in my case (true copies of which I have sent to the hon'ble Secretary of War, and to the Major General-in-Chief) is respected as authority, showing what his excellency's intentions and the true construction to be placed upon his decision and orders in my case, I presume there can be no necessity of my remaining ignorant of what is next to be done. I am waiting to be instructed when I may proceed to duty. To do this I have to be ordered to some duty, being informed that "the question of your nomination is decided" or that the President's explanatory letter determines the question in the minds of those who
96 are bound to carry out the directions emanating from the highest authority. If the President's decision is construed and carried out as explained in his letter to me, I respectfully suggest that it will be necessary the hon'le Secretary of War direct me to be informed that, a vacancy having occurred, placing me at the head of the list of 1st lieutenants, in obedience to the decision and orders of the President of the U. States in my case, and having been thus reinstated for promotion to the rank of captain on the occurrence of the first vacancy, that I shall proceed to join my regiment or other duty as the good of the service may require.

You will, I hope, give me an early reply to this.

I remain, most respectfully, your ob't serv't,

JAMES W. SCHAUMBURG,
1st Reg't U. S. Dragoons.

Major L. THOMAS,
Ass't & Act. Adj't Gen'l U. S. Army.

A. G. OFFICE, *Oct.* 27, 1'46.

True copy.

W. G. FREEMAN,
As't Adj't Gen'l.

97 EXHIBIT M.

O. A. F., 86.] [From No. 68.]

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
November 9th, 1874.

I hereby certify that it appears from the records of this office, of which I am the legal custodian, that the annexed are true copies of the originals on file in this office.

[SEAL.]

E. B. FRENCH,
Second Auditor U. S. Treasury.

Be it known that E. B. French, who certified to the foregoing, is now and was at the time of so doing, Second Auditor of the Treasury of the United States, and legal custodian of the records of the Second Auditor's Office, and full faith and credit are due his official attestations.

In testimony whereof, I, Charles D. Conant, Acting Secretary of the Treasury of the United States, have hereunto set my hand and
98 caused to be affixed the seal of the Treasury Department, of the city of Washington, in the District of Columbia, this 10th day of November, in the year A. D. 1874.

CHARLES D. CONANT,
Acting Secretary of the Treasury.

99 To the SECOND AUDITOR U. S. TREASURY, *&c., &c.:*

SIR: Since I wrote to you acknowledging the correctness of statement you sent me of a balance of $290.67, due by me as against what I stated in my account current March 22, 1862, viz, $223.77, erroneously, as turned over to paymaster, the over-additions in pay-rolls, vouchers 18, 24, 26, 34, being $67.00, added to the latter sum, makes $290.67, as the balance due by me to the U. S.; but this balance is not so great as it should be, considering that the suspended items are not such as I should be relieved from, and I do not wish to so avail of the "relief act." Congress could not have intended to give relief to disbursing officers who, by neglect or oversight, over-paid the exact amounts due. My clerk was negligent and I am accountable, and therefore I do not accept the benefit of the relief act, as per your "statement of suspensions removed," amounting to $132.62, which in-
100 cludes, as per voucher 12, over-paid to Major Gaskil, of $24.93.

This officer has due to him pay, &c., as lieut. and adj't in 3 months' call, Ohio Vol's, 5th Inf't'y, from the 20th April to the 11th June, 1861, when he was elected major, which more than covers the over-payment to him. For this over-payment, then, I am not in need of relief. The over-payment, voucher 19, to Private A. Patton, error in time, $11.93, I have received back from him through Paym'r Bull. This, then, must be added to the $290.67, making $302.60. I received from Surgeon Capeheart $1.80, overpaid, as per vou. 19; also from Lieut. Kinkup 20 cents, overpaid, as per voucher 19. Add these to $302.60, is $304.60. I received from Corp'l McFarland, overpaid, as per voucher 16, $1.60, which, add to $304.60, is $306.20. Add to this, as per vou. 20, 36 cents overpaid to Corp'l Toothman, 37 cts., to Private W. J. Anderson, makes $306.93. Add, as per vou. 24, overpaid to Corp'l Fludner 36 cts., to Lt. Williamson 93 cts., and Musician Delunys 36 cts., makes $308.68. Add, as per vou. 24, overpaid to J. Belger $3.50, C. Crown $5.82, which makes $318; add, as per vou. 39, paid to Noah Blake, error in time,

$13.44, which makes $331.44. (It may be that this man has due
101 to him more than will cover this overpayment. He was discharged 12 May, 1862, on surg. certf., at New Market, Va.) Add overpaid to Peter Dills, 1st s'g't. as per vou. 53, $2.00, and to J. W. Madison 43 cents, which makes $333.87. Add, as per vou. 69, overpaid to Private Samuel Armstrong and Jacob Armstrong, each $1.73, which makes $337.33; add, as per vou. 74, overpaid to Moses Craig, priv. 1, and to Private Daniel Dillon $25.14, which makes $363.47; add, as per voucher 71, $1.26 (not $2.26), which makes $363.47; add, as per vou. 24, Priv. Bogle, overpaid $1.48, as per vou. 25, error in payment per month to Serg't Tomlinson, $2.44, as per voucher 40, overpaid to S'g't. Lanise $4.74; same voucher, overpaid to B. Tomlinson 60 cents; vou. 16, overp'd to Corp'l Farlin $1.23; as per vou. 46, to Brig. Surg. Clendenning, overpaid, error in calculation, 79 cents, as per vou. 53; overpaid to Musician L. Johnson $2.00, as per vou. 47; overpaid 1 day to Capt. Showitten $4.19; as per same voucher, overp'd 1 day to Lt. Pierpont $3.38, making $384.35.

I believe this to be the correct balance due by me upon the showing of the vouchers, excluding, as per vou. 12, $24.93 overpaid Maj. Gaskill, as he has due to him pay, &c., as l't and adj't in 3 months'
102 vol's, Ohio 5' Inf't'y, from the 20th of April to the 11 of June, when he was elected major for 3 y'rs or end of the war. This would more than cover what was overpaid him.

I exclude, as per vou. 20, as overpaid to Priv. Gainor $20.17, as he was not overpaid, for he was mustered in service on the 27 April, 1861, by Capt. Granger, U. S. A., at Camp Harrison, near Cincinnati. I exclude, as per vou. 27, for accountability for not stopping against Private Huber $8.00. This was for his debt to sutler. Paymasters cannot be held to account for non-stoppages for sutlers. P'masters are only required to [illegible] sutler at the "pay-table" when he presents his acc'ts against soldiers, or on final statement to discharged soldiers. I exclude, as per vou. 27, overpaid to Lt. Frazer $1, as he was 3 days on picket duty before the acceptance of his resignation was received by him. I exclude, as per vou. 63, overpaid to Lt. Col. Richmond $8.00 for forage allowance. This officer drew forage for 4 horses, which he was entitled to receive, and he certified to its being correct, and as an officer continuing in the service he was accountable, and if he had over-
103 drawn the Paymaster-General should have notified him to pay it back. This used to be the course pursued in such cases. These items given in your statement of suspensions as removed under the relief act, as I show, could not be considered.

I propose to offset the above-admitted balance of $384.35 by claiming to be paid long service rations which my clerk forgot to include in my pay accounts as add'l paymaster. The charge for 5 extra rations per day, as I was entitled, you will see in voucher 78 at the end of the printed certificate and under remarks "which were." The last payment which I received was from Treasury, on the statement of the Second Auditor and Comptroller in 1845. Service rations then allowed for 10 years (see official Army Register for 1834, 1835, 1836, and 1845); my original entry was the 28 March, 1833; my name was omitted from the Army Register from 1836 to 1845, when it was replaced by decision and orders of President (Mr. Tyler), dated 11 Jan'y, '44, and appeared in the Register Jan'y, 1845, at the head of the list of 1st lieut. of dragoons (1st reg't, now 1 reg't of cav'l'y).

104 Soon after Mr. Tyler retired from power, in direct violation of his solemn official decision and orders, of record, declaring that my

name had been improperly omitted from the Army rolls as an officer, & ordered its replacement as a 1st lt., according to my commission, and to be promoted to the 1st vacancy of captain, the cowardly sychophants and marplots in the purlieus of the department who had committed the fraud and had along opposed my right to have my name on the Army Register and had been nonplussed by the President's decision reversing their dishonest action in 1836, by which my separation from the service had been effected, set to work to have the decision directly or indirectly set aside.

In the called session of the Senate, on Mr. Polk's assuming authority, the enemy succeeded by great effort and on false representations to induce the Senate, in secret session, ex parte, to pass a resolution condemning the decision of the late President (Mr. Tyler) as illegal, and recommended to President Polk to disregard or make an order
105 against it, to set aside the solemn official act of his immediate predecessor, and thereupon, without giving me any notice to defend my right and to vindicate the just and legal decission of President Tyler, directly contrary to the long-established rule not to disturb an execution decission when recorded in favor of a citizen, issued an order thro' the Sec'y of War, W. L. Marcy, directing my name to be erased from the official Army Register as having been irregularly printed therein, although this order, virtually a negative, or made null and void President Tyler's decission and orders, and my rights as officer ignored by the authorities, yet the decision of record is irreversible and as valid as when made.

When the Senate found it had been imposed upon by false st[illegible] and had unwittingly recommended a wrong to be done it rec[illegible] its resolution and adopted a resolution [illegible] and repl[illegible] first, and asking the President to rescind and revoke
106 that had been made in accord with the first resolution.

This resolution, with two others to the same purpose as yet been acted upon by the executive authorities. But whether I am so recognized or not does not divest me of my legal rights & privileges as an officer by the title of my commission as 1st lt.; of this perhaps you will have no opinion, or will say you have no cognizance and cannot enquire about, but you have the right, as your predecessor, Mr. 2d Auditor McCalla had under the same state of the case, to allow, and as the Comptroller Poins approved; although my name had been off the register from 1836 to 1845 they viewed my being continuously in the Army de lege as President Tyler had decided.

But should you not accord with this and allow me for long service, i. e., extra rations for 25 years, computing 5 rations per day from the 5 of Sept., 1861, the date of my appointment as add'l paymaster, up to the 22 of March, when I ceased to be so, then I shall owe a balance of $290.67, as acknowledged. But if you will allow me credit for
107 long-service rations, as follows, for continuous service for 25 years, from 1833 to 1861 & 1862, 1 extra ration for every 5 years would for 25 years be 5 rations extra per day for 196 days, commencing the 5 of Sept., 1861, to the 22d of March, 1862, the time I served as additional paym'r being 196 days, is 980 rations, at 30 cts. per ration, makes $294, which deduct from the stated balance of $290.67, would leave due by U. S. to me $3.33.

But as I have presented it above, not availing myself of the relief act, and admitting the several overpayments except those I think it right to exclude, I admit the balance to be $384.30; deducting $294 for extra rations, leaves a balance of $90.30 instead of $290.67.

Please inform me whether this presentation of the amount of my disbursements, &c., is accepted or admitted in the place of the settlement you furnish.

Philad'a, May 30, 1871.

I remain, very respectfully, your obed't serv't,

JAMES W. SCHAUMBERG,

Late Add'l Paym'r U. S. A., No. 272 South 4 street, Philad'a, Penn'a.

Correct copy.

E. B. FRENCH, *Auditor*,
By S. C. B.

108 (Endorsed as follows:)

2D AUD. OFFICE.

Referred to the 2d Comptroller for his decision as to the payment of longevity ration.

(S'g'd) E. B. FRENCH, *Auditor*,
By S. C. B.

TREASURY DEPT., 2D COMPT. OFFICE,
June 6th, 1871.

Respectfully returned to the Auditor's office. The enclosed evidence not deemed sufficient to allow the claimant longevity rations.

(S g'd) J M. BRODHEAD,
Comptroller,
By L. S. THOMAS,
Chief P. M. Div.

109 To the 2D AUDITOR OF THE TREASURY, &c., &c.:

SIR: Your letter of July 25, 1871, announcing that the Second Comptroller did not allow the claim for longevity rations which I made has been received. I prefer to contest the legality of my right to retain that money, viz, "the sum shown to be due to the U. S.," viz, $306.20, as a balance after final revision in my account as paymaster, which I asked to be offset by my charge for longevity allowance of 5 extra rations under my commission as 2d and 1st lieutenant of dragoons from 1833 up to 1861, for continuous service, and which I claim to be paid for in connection with my official monthly pay account as major-paymaster, but which my clerk had omitted to include in the accounts. I claim the longevity rations in consequence of the tenure of the commission I duly receive. I was first appointed 2d lieutenant in April, 1833, in the battalion of mounted rangers, 2d lt. of dragoons, September 17, 1833,
110 first lieutenant of dragoons, to rank from 1st March, '36, confirmed by the Senate 15th June, '36, and my commission was signed by the President, countersigned by the Secretary of War, registered in the Department of War 1st of July, 1836, and transmitted to me by the Adjutant General U. S. Army, which I duly received.

This commission has never been resigned nor surrendered by me, nor have I been dismissed, cashiered, disbanded the service, either in form or pretense; but an erroneous entry or order of an alleged resignation of this commission was made on the record of the Adjutant General's Office when I never tendered such resignation. The entry was made under color of a tender of resignation of my office of 2d lieutenant, and afterwards legally withdrawn under Genl. Order 43, dated 28th June, 1836, directed by President Jackson. This offer to resign was made only to enable me to attend to important matters in New Orleans, on

account of which the commanding general had consented to my
111 having 3 months' leave of absence from my station, but which the commanding officer of the post, to whom it was referred, refused to let me leave, and I had to write my resignation to enable me to depart to perform a sacred duty.

The commission as first lieutenant being issued to me by the President after that tender of resignation was received by the War Department was a legal refusal of the resignation, and, at all events, I never intended to resign my commission as first lieutenant, and the order or entry on record of such a resignation by a subordinate officer, and without any authority or consent, can neither deprive me of my rights nor override the commission of the President, of which and the rights under which I cannot be deprived except by a court martial, approved by the President, according to the Articles of War, by disbandment or reduction by Congress, or by my resignation, neither of which has occurred. I, therefore, prefer to test the matter in a court of law and justice or equity, and must decline to comply with your request
112 to pay "over the sum shown to be due the U. S., viz, $306.20 to the Treasury. I may here add that if I cannot amicably obtain them I intend to compel an observance of my rights under my commission and the Constitution and laws of my country, and I have taken legal advice as to their extent and importance.

I will cheerfully furnish to the Attorney-General, or any other proper officer, any further references to public records or information necessary, in his judgment, for an investigation into this subject, if you will, or the Comptroller shall, think proper to refer the matter to the Attorney-General, or rather the Department of Justice.

Philadelphia, Pa., July 29, 1871.

I remain, respectfully, your ob. s't,

(S'g'd) JAMES W. SCHAUMBURG,
1st Lt. U. S. Dragoons, now Cavalry, late add'l P. M. U. S. Army,
272 South 4th street, Philadelphia.

113 (Endorsed as follows:)

S. 136 P. M. D., Q. A. O., 1871.

2D AUDITOR'S OFFICE, *Aug.* 9, 1871.

Respectfully referred to Hon. J. M. Brodhead, Comptroller, for his consideration.

(S'g'd) C. F. HENING,
Act'g Auditor.
By T. C. B.

TREASURY DEPARTMENT, 2D COMPTROLLER'S OFEICE,
Sept. 21, 1871.

Respectfully returned to the 2d Auditor of the Treasury.
The request contained within should not be granted.

J. M. BRODHEAD, *Comptroller.*
(S'g'd) By L. S. THOMAS,
Chief Pay M. S. Div.

114 TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,
August 24, 1871.

The Adjutant-General will please give the military history of James W. Schaumburg from March 28, 1833, to Sept. 5, 1861. The information is sought for a correct adjustment of his accounts with the govern-

ment, claiming service rations for 25 years, while add'l P. M. U. S. Army, from September 5, '61, to March 22, 1862.

Please make this special.

H. K., Room No. 87.

Very respectfully,

E. B. FRENCH,
Second Auditor.

(S'g'd) By T. C. BAILY.

115 (Endorsed as follows:) 3754, A. G. O. (A. C. P.) 1871. Washington, D. C., Aug. 24, 1871. Auditor, Second; U. S. Treasury, by T. C. Bailey. Requests military history of Jas. W. Schaumberg, from March 28, 1833, to Sept. 5, 1861. Rec'd A. G. O., Aug. 25, 1871.

L. B., vol. 12, p. 304, 1871.

WAR DEPARTMENT, A. G. O.,
Aug. 26, 1871.

Respectfully returned to the 2d Auditor.

James W. Schaumberg was appointed 2 l't., 1 dragoons, 19 Sept., 1833, promoted to 1st l't 1 March, 1836; resigned 31 July, 1836; reinstated 29 July, 1844; dropped from the rolls of the army 24 March, 1845; appointed add'l paymaster U. S. vol's to rank from 4 Sept. 1861, and accepted appointment 14 Sept. 1861. His appointment as add'l paymaster U. S. vol's was negatived by the Senate, and thereupon revoked by the President, March 11, 1862.

It is proper to add that Mr. Schaumberg has lately (Aug. 24, 1871), filed a claim in this office, to be recognized as an officer under his commission as 1 l't from the date of the President's order for his reinstatement, dated Jan. 11, 1844. The absurdity of this claim will be apparent from the following:

IN EXECUTIVE SESSION.

SENATE OF THE U. S.,
March 19, 1845.

Resolved, That the order of the late President, of the 13th [11th] January, 1845, (4) directing James W. Schaumberg to be restored to the army, and to be recognized as an officer therein, is illegal and void, and that the name of the said James W. Schaumberg ought not to be continued on the roll of the army.

Attest:

(S'g'd) ASBURY DICKENS,
Secretary.

Under this resolution the President directed (M'ch 24, 1845), Schaumberg's name to be erased from the Army Register

(S'g'd) THOMAS M. VINCENT,
Ass't Adjutant General.

116 EXHIBIT N.

To Brigadier-General BENJAMIN ALFORD,
Paymaster-General United States Army:

SIR: I have respectfully to submit to you the following:

In a communication addressed to the Secretary of War, by the Adjutant-General, dated March 13th, 1845, to answer an inquiry of the Sen-

ate, General Jones answered: "In reply to the second and last clause of the Senate's resolution, it appears that since his restoration to the Army, Lieutenant Schaumberg has received $254.85, inclusive of the 31st January, 1845, his pay commencing from the 19th of October, 1844, being the first date since the accceptance of his resignation in 1836."

I do not know on what ground, or by what authority the Adjutant-General asserted that "his [my] pay commenced from the 19th of October, 1844," which is against the decision and orders of the President, which was that I had never ceased by any legitimate act to be an officer of the Army, ranking as a first lieutenant in the first regiment of
117 dragoons, from the 1st of March, 1836, to which I had been regularly promoted, and my commission was signed, sealed, and delivered to me by the Adjutant-General, which I have continued to hold to this moment and in no way given up, or in any legitimate way forfeited, being continuously entitled to the enjoyment of all the vested and acquired rights and privileges of an officer and citizen under the Constitution.

By an arbitrary proceeding, based upon false pretences, in the month of June, 1836, my name was taken from the Army roll, against which fraudulent action I entered my solemn protest. After seven or eight years of earnest demand for a reversal of the orders issued from the headquarters of the Army, by which I was separated from the Army, and failing to obtain from two or three Secretaries of War a fair examination of the case, they relying upon the prejudiced or partial statement or report of the officials who had committed the wrong against me, I appealed to the President to minutely examine into all the facts of the case, and to relieve me from the great wrong done to me.

118 The President answered my appeal as follows:

'Lieutenant SCHAUMBERG:

"The claim of Lieutenant Schaumberg to be reinstated in the Army has been duly considered by the President of the United States. On a careful examination of all the facts and circumstances, he is of opinion that Lieutenant Schaumberg was entitled to the benefit of the order No. 43, dated 28 June, 1836, issued by direction of the President, and agreed to accept its terms within the proper time.

"The President, therefore, directs that Lieutenant Schaumberg be restored to the Army on the happening of the first vacancy of captain in the first regiment of dragoons, and that if, prior to the happening of a vacancy in the grade of captains a vacancy shall occur in the grade of first lieutenant, he be placed at the head of the list of first lieutenants, to be promoted to the rank of captain as soon as a vacancy shall occur in that grade, but as Lieutenant Schaumberg has been thrown out of service by his own act of resignation and considering the decisions of the Secretaries of War heretofore on his case, it is ordered that his pay and emoluments shall only take effect from the time of his restoration to the service by the occurrence of a vacancy."

This decision was made the 11th January, 1844. No vacancy of captain occurring, but a vacancy of first lieutenant happened on the 19th July, 1844, by the death of 1st Lieut. West; whereupon the Adjutant-General notified me on the 29th of same month with an order to report to Colonel Kearny. The order was suspended at my request; my name was replaced on the Army rolls, and, as directed by the President, was put at the head of the list of first lieutenants in the First Regiment of Dragoons in the official Army Register for January, 1845, "to be pro

moted to the rank of captain as soon as a vacancy shall occur in that grade;" and "ordered that his pay and emoluments shall only take effect from the time of his restoration to the service by the occurrence of a vacancy;" meaning that my reinstatement, whether as captain
120 or as first lieutenant, whichever should first occur, should follow immediately; that is, from the day or date when either a vacancy of the one or the other might occur. Then commenced, under the executive command, "the time," that "his pay and emoluments shall only take effect, namely, the 19th of July." As a first lieutenant, I had due to me pay, &c., undrawn, from the 1st August, 1836, to the 31st December, 1840, when I was entitled to promotion to rank as captain in the First Regiment of Dragoons, and to receive my pay and emoluments as such until my further promotion by seniority to the rank of major in 2d Dragoons, 15th July, 1853, to rank by promotion as lieut.-colonel in 2d Cavalry, 28 Sept., 1861, and to be promoted to colonel.

Holding my commission as a first lieutenant according to the law of promotion by seniority vested in me the perfect right to have been promoted to each respective grade as above, with all the rights and privileges thereunto belonging. But, without considering the question further, I will now simply show that, as a first lieutenant, supposing
121 no promotion to have occurred, and I could make no claim to be other than a first lieutenant by my commission, legally held by me, and never resigned, or in any way forfeited. It is proved that I have constantly held myself in readiness, willing, and had all the physical and mental capacity to perform all the duties of my commission, or of any of the grades to which I might have been ordered as a cavalry officer; and as commission gives rank, and pay is the concomitant of rank, and as Congress has from year to year appropriated money for the support of the Army, including pay, subsistence, and emoluments of the commissioned officers of dragoons or cavalry, and as I am a commissioned officer thereof, I am entitled to be paid accordingly.

It is no conclusive answer to say that I cannot be so recognized, and paid what the laws and justice entitles me to receive, because I have arbitrarily and fraudulently been separated from the service. I claim to be paid as a first lieutenant of dragoons or cavalry from the 1st
122 August, 1836, to the present time, leaving aside the difference between the allowance of 1st lieutenant and that of captain and the other grades to which I should have been regularly promoted by seniority but for the illegal proceedings by which I have been maliciously despoiled of my vested rights. I wish to have an explicit answer to the above demand.

I have further to refer to the expressions of the Adjutant-General as brought to your notice in the beginning. The President thought proper to order that I should not draw my pay, &c., until I should be reinstated, either by a vacancy of captain or of first lieutenant, to rank as one or the other, and "that his pay and emoluments shall only take effect," i. e., "from the time of his restoration to the service." When was that to be? By the occurrence of a vacancy; that is, on the happening of the first vacancy. How long after? Of course, immediately "on the happening of the first vacancy," and not a day later—aye, from that
123 very day when it did happen, viz, the date of the decease of Lieut. West, the 19th October, 1844. If I am correct, then, under decision or order of the president I should have received from the paymaster (Major D. Randall, who was stationed in this city at the time) pay, &c., from the 19th July. I do not remember for what time, from what date, or to what date I was paid. Gen'l Jones says from the 19th

October, 1844, to the 31st January, 1845, inclusive. If he states correctly, then, to properly come under the President's order, I should be paid from the 19th July to the 18th October, 1844. If it was right that I should have received pay, &c., as an officer of the army from the 19th October, 1844, to the 31st January, 1845, I cannot see why I should not have been paid from the 19th July. There being no reason against it that I know, I suppose you will pay the same, being for three months as a first lieutenant of dragoons, with 2 longevity rations per diem, computing from 1833 to 1844. I believe I did not draw pay for the month of February, and 24 days in March, 1845. If I did not,
124 please to include it with the other amount, leaving the pay, &c., for 24 days in March, 1845, for another account. If this claim for undrawn pay, &c., as an officer of the army be not within your official cognizance to liquidate, please to refer it to the proper officer of the Treasury of the U. States.

Philadelphia, July 7th, 1875.

I remain, very respectfully, your very obedient servant,

JAMES W. SCHAUMBURG,

Commissioned First Lieut. 1st Reg. Dragoons, now 1st Reg. Cavalry, 272 South 4th St., Philadelphia.

(Endorsed as follows:) S. 37, vol. 10, P. & B. D., 2 A. O., 1875. A. Paymaster General's Office, July 13, 1875. 4192. Received, 272 South 4th St., Philadel'a, Pa., July 7, 1875. Schaumburg, Jas. W., makes application for undrawn pay as 1st Lt. 1st Dragoons. Was restored to the service July 19, 1844, and claims to be still an officer of the army. Reg'd P. B. D., July 10, '75.

Respectfully referred to the 2nd Auditor with reference to the claim for arrears of pay.

CHAS. F. LARNED,
Actg. Pay-M. Gen'l, U. S. A.

P. M. G. O., July 9, 1875.

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE, *Aug.* 24, 1875.

Respectfully returned. Your application for pay and allowances as first lieutenant of the 1st U. S. Dragoons was disallowed January 5, 1875.

Congress alone can authorize the payment of your claim.

These papers have been held until this time pursuant to your request of July 10, 1875, herewith returned.

E. B. FRENCH, *Auditor*,
By H. A. W.

N. W., 56.

125 EXHIBIT O.

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE, *May* 11, 1875.

I hereby certify that the exhibit hereto attached is the original account filed in this office January 5th, 1875, by Lieut. James W. Schaumburg, and which was disallowed, as per letter of that date, also hereto attached.

[SEAL.]

E. B. FRENCH,
Second Auditor U. S. Treasury.

Be it known that E. B. French, who certified the foregoing, is now, and was at the time of so doing, Second Auditor of the Treasury of the United States, and the legal custodian of the records of the Second

Auditor's Office, and full faith and credit are due his official attestations.

In testimony whereof I, B. H. Bristow, Secretary of the Treasury of the United States, have hereunto set my hand and caused to be affixed the seal of the Treasury Department, at the city of Washington,
126 in the District of Columbia, this 11th day of May, anno Domini 1875.

[SEAL.]

B. H. BRISTOW,
Secretary of the Treasury.

127 TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
January 5th, 1875.

SIR: Your application for pay and allowances as first lieutenant 1st U. S. Dragoons, as shown by the accompanying account, is disallowed. Congress alone can authorize the payment of your claim.

Respectfully,

E. B. FRENCH,
Auditor.

JAMES W. SCHAUMBURG, Esq..
Philadelphia, Pa.

N. W. 56.

128 (Preface as follows:)

SECOND AUDITOR'S OFFICE,
Jan'y 5th, 1875.

Account of Jas. W. Schaumburg for undrawn pay & emoluments, including commutation for forage, rations for self and servant, for longevity rations, &c., &c., which has accrued and due to him as first lieutenant of dragoons & cavalry, mounted, as provided by Congress, annually, and appropriated for the support of the Army, to be paid monthly up to July 15, '71, and by salary to be paid monthly since the last date, which, if not so paid to the officer, stands to his credit, to be drawn by him when he pleases. This account, charges for pay, &c., due and undrawn, since the 1st August, 1836, to the 31st October, 1874, amounts to 69,261.80.

By act of Congress approved 3d March, 1833, authorized the organization of a regiment of dragoons, the officers to be appointed and commissioned by the President, namely, 1 colonel, 1 lt. col., 1 major, 10 captains, 10 first lieutenants and 10 second lieutenants, 1 adjutant. James W. Schaumberg was appointed 2d lieut. mounted rangers March 28th, 1833, & was transferred to the regiment of dragoons as a 2nd lieutenant, to rank as such from 19th Sept., 1833 (vide Army Register for January, 1834, '35, '36), and he was promoted to be first lieutenant, to rank as such from the 1st March, 1836, vice Noland, resigned (vide Gen'l Orders No. 46, July 6th, 1836), and was confirmed by the Senate June 15th, and his commission signed, sealed, and recorded in the War Department 1st July, '36, and some short time after was handed to 1st Lt. Schaumberg by the Adjutant General. This commission he holds, and has never resigned or forfeited by any act of wrong-doing, and has constantly demanded his recognition as the laws and regulations entitled him to have and enjoy, and as the President, on the 11th January, 1844, decided he was entitled to, and so ordered. (See his official letter & order herewith annexed.) Furthermore, because of the illegal pretermitting 1st Lieutenant Schaumberg's name from the Army roll
129 by the arbitrary proceedings of the military officials in the War Department in June, 1836, his promotion to rank as a captain in

the 1st Regiment of Dragoons, to date as such from the 31st December, 1840, was denied, and his junior in rank, 1st Lieutenant Enoch Steen, was promoted in his stead; and that by another arbitrary official act, founded on false grounds, the solemn decision of the President, as above stated, of the 11th January, 1844, to replace his name on the Army Register and ordering his promotion to rank as captain to date from the 31st December, 1840, above Steen, was disrespected and the execution of it unfulfilled, by which, as above stated, his promotion was again refused, and thereby his legal rights ignored and trampled upon, and what would have been acquired according to the law and regulation, his right to further promotion to rank as major from the 15th July, 1853, instead of his junior, Steen, and to be promoted to rank as lieut.-colonel from the 20th February, 1861, instead of Steen, his junior, and to be promoted to be colonel from . Lieutenant Schaumberg's legal and equitable rights under the Constitution have been tyranically wrested from him, and it only remained for the Executive to set aside the wrongful order of the 24th March, 1845, so that he shall be fully restored to all his legal and just rights as a citizen and officer. But it does not to enable the accounting officers of the Treasury, upon a clear showing of all the facts of record of the War Department, that Lieutenant Schaumberg has never by any legal or justifiable proceeding been divested his Constitutional rights, as claimed by him, and as was adjudged by the President on his appeal, against false and erroneous as well as illegal and unjust subordinate officials in June, 1836, the order of 24th June being a nullity, because it could not annul a solemn recorded decision of the President declaring Lieut. Schaumberg to be entitled to rank as an officer in the Army. (See Ex-President Jackson's critical examination and opinion herewith annexed.)

130 *The United States to First Lieutenant James W. Schaumberg, 1st Reg't Dragoons, now 1st Cavalry, U. S. A.*

For undrawn pay, &c., for self.
" servant not soldier.
" subsistence for self.
" subsistence for servant not soldier.
" clothing for do. do.
" forage for 2 horses.
" additional ration for every five years' service.

The amount due for undrawn pay, &c., &c., from the 1st August, 1836, to the 15th July, 1870, under the old system of payments for distinct allowances, charged in officers' pay accounts, as presented opposite, the sum total of which is $59,647.26, more or less, and add to this as follows, under act July 15th, 1870: Pay as " first lieutenant, mounted,' from that date to 31st October, 1874, @ $1,600 yearly pay with 40 per cent. for 20 years service added, making $186.67, payable monthly. The whole amount charged being $69,261.80, from which deducted what I received as first lieutenant of dragoons from the 19th July, 1844, under the decision and orders of President Tyler of the 11th January, 1844, and as explanatory thereof in his letter of the 24th January, 1845, of record in the War Department, a copy of which and the decision is herewith annexed, and also to be deducted the difference between the pay, &c., of a first lieutenant of dragoons or cavalry, and the pay, &c., of a paymaster, or pay of major of cavalry, the amount for both received, 1,721.01.

131 Pay proper from 1st August, 1836, to the 31st December, 1836, @ $33 33 per month, 5 months.... ..... 166 65

From 1st January, 1837, to 31st Jan'y, 1857, is 241 months, @ $33.33 per month, is	3,032 53
For February, 1857, $33.33, to which add increase from the 21st of same to $53.33, is	39 33
From 1st March, 1857, to 15th July, 1870, is 150 months 15 days	8,085 67½
months, @ $53.33 per month, is	7,672 52
33⅓ pr. cent. was allowed on pay proper from July 1st, 1866, to July 1st, 1868, being for 24 mo., is	299 97
For rations, 5 rations per day, 30 days pr. mo., for which charge from 1st August, 1836 (31st July, 1836, was the date on which I was illegally separated from the Army), to the 21st February, 1857, number of days, 7,371, 5 rations per diem, 36,855, @ 20 cts. pr. ra., is	7,371 00
For rations, 5 per diem increase to 30 cts. per ra., is 1.50 per diem, as per act of Congress 21st Feb'y, 1857, to the 15th July, 1870, is 4,807 days, 5 ra's per diem, is 24,035 rations, @ 30 cts. per ration, is	7,210 50
For one additional ration for every 5 years' service from the 28th of March, 1833, date of appointment at 2nd lieut. of Mounted Rangers:	
The first service ration commenced 29th March, 1838, @ 20 cts. per ration to the 21st February, 1857 (when increased to 30 cts.), making which is 7,116 days, and the same number of rations @ 20 cts. is	1,423 20
For the same ration, @ 30 cts., from the 21st Feb'y, 1857, up to the 15th July, 1870, is 4,785 days, and the same number of rations @ 30 cts. is	1,435 50
For the second (2) ration commenced from the 29th March, 1843, to 21st February, 1857, as above, @ 20 cts., for 4,971 days, and same number of rations is	1,246 50
For same ration, @ 30 cts., from 21st February, 1857, to the 15th July, 1870, is 5,165 days, and same number of rations is	1,549 50
For the third (3) ration from the 29th March, 1848, to the 21st Feb'y, 1857, @ 20 cts., 3,201 days, and same number of rations is	640 20
For the same ration @ 30 cts., from 22nd Feb'y, 1857, to the 15th July, 1870, is 4,815 days, and same number rations is	1,444 50
132 For the fourth (4) service ration to commence 29th March, 1853, till the 21st Feb'y, 1857, @ 20 cts., is 1,401 days, and the same number of rations is	280 20
For same rations from the 22d Feb'y, 1857, to the 15th July, 1870, @ 30 cts. per ration for 4,608 days, and same number of rations is	1,441 80
For the fifth (5) ration, to commence 29th March, 1858, to the 15th July, 1870, @ 30 cts. per rations, 4,140 days, same number of rations	1,242 50
For the sixth (6) service ration, to commence 29th March, 1863, to the 15th July, 1870, for 2,610 days, same number of rations is	783 00
Allowance for forage for 2 horses commuted:	
For two (2) horses, per month, @ $8.00 each, from the 1st of August, 1836, was paid up to 31st July, 1836, to the 15th of April, 1865, the end of the war, being for 348 months @ $16 per month, is	5,472 00

For one horse, in time of peace, @ $8 per month, from 15th April, 1865, to the 15th July, 1870, is 57 months @ $8 per mo. is 450 00

Allowances for private servant, not soldier:

For one servant, pay @ $5 per month from 1st August, 1836, to 7th July, 1838, is 23 months, is 115 00

For ditto at $8 pr. month, by act of July 7th, 1838, to the 12th August, 1854, is 186 months, is 1,488 00

For ditto, $12 per month, by act of August 4th, 1854, to August 6th, 1861, is 84 months, is 1,008 00

For ditto, $13 per month from the 6th August, 1861, to the 17th July, 1862, is 11 months, is 143 00

For ditto, $12 pr. month, as reduced by act July 17, 1862, until 3d March, 1865, being 31 months & 17 days, is 378 00

For ditto, @ $16 pr. month, as increased by act of 3rd March, 1865, to the 15th July, 1870, is 58 months, is 1,030 36

For allowance of clothing for servant:

For clothing commuted from the 1st August, 1836, to April, 1865, is 332 months, @ $2.50 pr. month, is 770 00

For ditto, as per act April 1st, 1865, increased to $650 per month from the 1st April, 1865, to the 15th July, 1870, which is 63 months 15 days, is 381 50

133 For allowance of one ration per day for serv't:

For allowances of one ration per day for servant from 1st August, 1836, to 21st Febr'y, 1857, @ 20 cts., is 1,486 00

For same ration @ 30 cts., as per act 21st Feb'y, 1857, to the 15th July, 1870, which is 4,425 days, is 1,327 50

$59,647 26

For pay under the act 15th of July, 1870:

Graduated to each respective grade, with added percentage upon every 5 years' service upon yearly pay prior to five years' service @ 10 per cent. for 5 years, 20 per cent. for 10 years, 30 per cent. for 15 years, and 40 per cent. for 20 years' service, as "yearly pay," payable "monthly," as herewith accompanying per table of pay allowed to officers (by law) of the Army, annexed to Official Army Register, &c .....

For undrawn pay as a first lieutenant of the 1st Regiment of Dragoons, now designated the 1st Regiment of Cavalry, U. S. Army .....

From the 15th July, 1870, yearly accrued undrawn pay as a first lieutenant, mounted, $1,600 per year, with 40 per cent., 20 years' service, is $186.67 per month; there is due on this account from the 15th July, 1870, to the 31st October, 1874 ..... 9,614 54½

$69,261 80

(E. E.)

Deduct amount I received from 19th July, 1844, to the 28 Feb'y, 1845, under President Tyler's decision, and for what I received less as a 1st lieutenant, mounted, than

allowed to a paymaster from 5th September to 12th March, 1862, added together, is 1,121 01

$68,140 79

Philad'a, Pa., Nov'r, 1874.

JAMES W. SCHAUMBURG,
1st Lieutenant U. S. Dragoons.

(Endorsed as follows:) Account of First Lieutenant James W. Schaumburg for undrawn pay and allowances as an officer in the Army of the United States.

134 EXHIBIT Q.

[Page 11 of official army register for 1845.]

Showing the name of J. W. Schaumburg placed at the head of the first lieutenants by the order of President Tyler, to be first promoted to rank as captain on the happening of the first vacancy, to date from the 31st December, 1840.

FIRST REGIMENT OF DRAGOONS.

Name.	Rank in the Reg't.	Rank in the Army.		Date of first appointment.	Born in	Appointed from
Colonel.						
Stephen W. Kearney,	4, July, 36			1 lt. inf.,	12 Mar., 12 N. J.	N. Y.
Lieutenant Colonel.						
Richard B. Mason,	4 July, 36			2 lt. 8 inf.,	2 Sept., 17 Va.	Va.
Major.						
Clifton Wharton.	4 July, 36			2 lt. 1 art.,	28 Oct., 18 Pa.	D. C.
Captains.						
Edwin V. Sumner,	4 Mar., 33			2 lt. 2 inf.,	3 Mar., 19 Mass.	Mass.
Eustace Trenor,	4 Mar.,			2 lt. 4 inf.,	1 July, 22 N. Y.	M. A.
Nathan Boone,	15 Aug.,			Capt. m. ran.,	16 June, 32 Ky...	Mo.
Philip St. G. Cooke,	31 May, 35	Assistant quar-		Bvt. 2 lt. inf.,	1 July, 27 Va...	M. A.
Thomas Swords,	3 Mar., 37	termaster.		Bvt. 2 lt. 4 inf.,	1 July, 29 N. Y.	M. A.
Benjamin D. Moore,	15 June,			1 lt. m. ran.,	6 Nov., 32 Ky...	Ill.
James Allen,	30 June,			Bvt. 2 lt. 5 inf.,	1 July, 29 Ohio.	M. A.
John H. K. Burgwin,	31 July,			Bvt. 2 lt. 2 inf.,	1 July, 30 N. C.	M. A.
*Enoch Steen,	31 Dec., 40			2 lt. m. ran.,	16 July, 32 Ky..	Mo.
Burdett A. Terrett,	21 Feb., 42			3 lt. m. ran.,	10 July, 33 Va..	Va.
First lieutenants,						
JAMES W. SCHAUMBURG,	1 Mar., 36			2 lt. m. ran.;	23 Mar., 33 La..	La. A.
William Eustis,	15 June,			Bvt. 2 lt. 3 inf.,	1 July, 30 R. I.	M. A.
Lucius B. Northrop,	4 July,			Bvt. 2 lt. 7 inf.,	1 July, 31 S. C.	M. A.
Henry S. Turner,	3 Mar., 37	Adjutant.		Bvt. 2 lt.,	1 July, 34 Va..	M. A.
Abraham R. Johnston,	15 June,			Bvt. 2 lt.,	1 July, 35 Ohio.	M. A.
Philip R. Thompson,	30 June,			Bvt. 2 lt.	1 July, Ga...	M. A.
William N. Grier,	14 April, 38			Bvt. 2 lt.,	1 July, Pa...	M. A.
Thomas McCrate,	29 Jan., 39			Bvt. 2 lt.,	1 July, 36 Me..	M. A.
Philip Kearney, jr.,	22 July,			2 lt.	8 Mar., 37 N. Y.	N. Y.
Robert H. Chilton,	21 Feb., 42			2 lt.,	1 July, Va...	M. A.
Daniel H. Rucker,	8 Oct., 44			2 lt.,	13 Oct., N. J..	Mich.
Second lieutenants.						
Andrew J. Smith,	1 July, 38				1 July, 38 Pa..	M. A.
James H. Carleton,	18 Oct., 39				18 Oct., 39 Me..	Me.
Richard S. Ewell.	1 Nov., 40	Bvt.,	1 July, 40	Bvt.,	1 July, 40 Va..	M. A.
John W. T. Gardiner,	31 Dec.,	Bvt.,	1 July,	Bvt.,	1 July, Me.	M. A.
Leonidas Jenkins,	31 Dec., 41	Bvt.,	1 July, 41	Bvt.,	1 July, 41 N. Y.	M. A.
John Love,	21 Feb., 42	Bvt.,	1 July,	Bvt.,	1 July, Va...	M. A.
Abraham Buford,	12 April,	Bvt.,	1 July,	Bvt.,	1 July, Ky..	M. A.
Armistead T. M. Rust,	1 July,				1 July, 42 Va..	M. A.
Patrick Noble,	31 Dec., 43	Bvt.,	1 July, 42	Bvt.,	1 July, S. C.	M. A.
Henry W. Stanton,	8 Oct., 44	Bvt.,	1 July,	Bvt.,	1 July, N. Y.	M. A.
Thomas C. Hammond,	1 July, 42	Bvt.,		Bvt., 2 lt. 2 drag.,	1 July, Pa.	M. A.
Alfred Pleasonton,	1 July, 44	Bvt.,		Bvt.,	1 July, 44 D. C.	M. A.

* This officer was promoted to be captain instead of his immediate senior, First Lieutenant Schaumburg, whose name had been fraudulently pretermitted from the register in June and July, 1836.

EXHIBIT P.

PAY OF THE ARMY.

Table of pay allowed by law to officers of the Army, annexed to the Army Register conformably to the resolution of the House of Representatives of August 30, 1842.

Grade.	PAY OF OFFICERS IN ACTIVE SERVICE.						PAY OF RETIRED OFFICERS.						Acts of Congress establishing the present rates of pay.
	Yearly pay.	Monthly pay.					Yearly pay.	Monthly pay.					
		Prior to five years' service.	Five years' service.	Ten years' service.	Fifteen years' service.	Twenty years' service.		Prior to five years' service.	Five years' service.	Ten years' service.	Fifteen years' service.	Twenty years' service.	
			10 *per cent.*	20 *per cent.*	30 *per cent.*	40 *per cent.*							
General	$13,500 00	$1,125 00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	July 15, 1870. Sec. 24.
Lieutenant-general	11,000 00	916 67	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Major-general	7,500 00	625 00	.....	.....	.....	.....	$5,625 00	$468 75	.....	.....	.....	.....	
Brigadier-general	5,500 00	458 33	.....	.....	.....	.....	4,125 00	343 75	.....	.....	.....	.....	
Colonel	3,500 00	291 67	$320 83	$350 00	*$375 00	$375 00	2,625 00	218 75	$240 62	$262 50	$281 25	$281 25	
Lieutenant-colonel	3,000 00	250 00	275 00	300 00	325 00	†333 33	2,250 00	187 50	206 25	225 00	243 75	250 00	
Major	2,500 00	208 33	229 17	250 00	270 83	291 67	1,875 00	156 25	171 87	187 50	203 12	218 75	
Captain, mounted	2,000 00	166 67	183 33	200 00	216 67	233 33	1,500 00	125 00	137 50	150 00	162 50	175 00	
Captain, not mounted	1,800 00	150 00	165 00	180 00	195 00	210 00	1,350 00	112 50	123 75	135 00	146 25	157 50	
Regimental adjutant	1,800 00	150 00	165 00	180 00	195 00	210 00	.....	.....	.....	.....	.....	.....	
Regimental quartermaster	1,800 00	150 00	165 00	180 00	195 00	210 00	.....	.....	.....	.....	.....	.....	
First lieutenant, mounted	1,600 00	133 33	146 67	160 00	173 33	186 67	1,200 00	100 00	110 00	120 00	130 00	140 00	
First lieutenant, not mounted	1,500 00	125 00	137 50	150 00	162 50	175 00	1,125 00	93 75	103 12	112 50	121 87	131 25	
Second lieutenant, mounted	1,500 00	125 00	137 50	150 00	162 50	175 00	1,125 00	93 75	103 12	112 50	121 87	131 25	
Second lieutenant, not mounted	1,400 00	116 67	128 33	140 00	151 67	163 33	1,050 00	87 50	96 25	105 00	113 75	122 50	
Chaplain	1,500 00	125 00	137 50	150 00	162 50	175 00	1,350 00	112 50	123 75	135 00	146 25	157 50	

Grade.	Grade, or assimilated pay.	Yearly pay.	Acts of Congress establishing present rates of pay.
Superintendent	Pay of colonel	$3,500 00	June 12, 1858, Sec. 1; July 15, 1870, Sec. 24.
Commandant of cadets	Pay of lieutenant-colonel	3,000 00	
Adjutant	Pay of regimental adjutant	1,800 00	March 3, 1851, Sec. 1; July 15, 1870, Sec. 24.
Quartermaster	Mounted pay of his grade in the Army		July 17, 1862, Sec. 1; July 15, 1870, Sec. 24.
Treasurer	Pay of his grade in the Army		
Surgeon	Pay of his grade in the Army	2,500 00	July 15, 1870, Sec. 24.
Assistant surgeon	Pay of his grade in the Army	1,600 00 or 2,000 00	
Professor, of more than ten years' service, at the academy	Pay of colonel	3,500 00	July 15, 1870, Secs. 13 and 24; Feb. 28, 1873.
Professor, of less than ten year's service	Pay of lieutenant-colonel	3,000 00	
Assistant professor	Pay of captain, mounted	2,000 00	April 29, 1812, Sec. 2; July 15, 1870, Sec. 24.
Acting assistant professor	Pay of his grade in the Army		
Instructors of ordnance and science of gunnery and of practical engineering	Pay of major	2,500 00	Feb. 28, 1873.
Sword-master		1,560 00	Feb. 16, 1857, Sec. 2.
Cadet	$500 per annum and one ration per diem	609 50	April 1, 1864, Sec. 3; July 28, 1866, Sec. 8; Feb. 28, 1867, Sec. 2.

*The maximum pay of a colonel is by the law $4,500 per annum; hence less than full 40 per cent. can accrue.
†The maximum pay of a lieutenant-colonel is by the law $4,000 per annum; hence less than full 40 per cent. can accrue.

NOTES.—1. An aid-de-camp to a major-general is allowed $200 per year in addition to the pay of his rank, not to be included in computing the service increase.—(Act July 15, 1870, Sec. 24.)

2. An aid-de-camp to a brigadier-general is allowed $150 per year in addition to the pay of his rank, not to be included in computing the service increase.—(Act July 15, 1870, Sec. 24.)

3. Acting commissary of subsistance is allowed $100 per year in addition to the pay of his rank, not to be included in computing the service increase.—(Act July 15, 1870, Sec. 24.)

NOTES.—4. Assistant surgeons are entitled to pay of captain after five years' service.—(Act June 23, 1874, Sec. 4.)

5. Retired officers receive 75 per cent. of pay (salary and increase) of their rank, but no increase accrues for times subsequent to date of retirement.—(Act July 15, 1870, Sec. 24.)

6. A retired chaplain receives three-fourths of the pay (salary and increase) of his rank, (captain not mounted.)

7. Professors of the Military Academy are entitled to the same privileges as regards retirement from active service as officers of the Army.—(Act July 15, 1870, Sec. 13.)

NOTES.—8. Retired officers serving as professors at colleges receive no additional compensation.

9. Officers retired under Sec. 17, act of August 3, 1861, for cause not incidental to the service, receive 75 per cent. of the salary proper, attached to the grade held by them at date of retirement, but no percentage for service.

REMARK.—Section 24 of the act of July 15, 1870, directs that the salaries, as in this table, "shall be in full of all commutation of quarters, fuel, forage, servants' wages and clothing, longevity rations, and all allowances of every name and nature whatever, and shall be paid monthly by the paymaster: Provided, That fuel, quarters, and forage in kind may be furnished to officers by the Quartermaster's Department as now allowed by law and regulations. Officers traveling on duty without troops, escorts, or supplies, care allowed "only actual traveling expenses," "and all allowances for mileages and transportation in excess of the amount actually paid are declared illegal," (act June 16, 1874, sec. 1.) G. O. Nos. 69 and 112, A. G. O., series of 1874, prescribe the authorized items of "actual traveling expenses" and the regulations for payment of same.

136 EXHIBIT R.

WEDNESDAY, *March 19th*, 1845.

Resolved, That the order of the late President, of 11th January, 1845, directing James W. Schaumburg to be restored to the Army, and to be recognized as an officer therein, is illegal and void; and that the name of the said James W. Schaumburg ought not to be continued on the roll of the Army.

Ordered, That the Secretary lay a copy of this resolution before the President of the United States.

137 EXHIBIT R.

[General Orders No. 7.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
WASHINGTON, *March 24th*, 1845.

The following order has been received from the War Department:

WAR DEPARTMENT, *March 24th*, 1845.

The President of the United States directs that the name of James W. Schaumburg, esquire, irregularly printed at the head of the first lieutenants of First Regiment of Dragoons, in the last "Official Army Register," page 11, be erased from the same; but without reproach to Mr. Schaumburg.

W. L. MARCY,
Secretary of War.

By order:
R. JONES,
Adjutant-General.

138 EXHIBIT S.

EXEC. SESS.

SENATE UNITED STATES,
March 2d, 1849.

Resolved by the Senate, That the resolution of the Senate of the 19th March, 1845, respecting James W. Schaumburg, be rescinded and repealed, and that any order of the President, made by reason of said resolution, should be revoked.

Ordered, That the Secretary of the Senate lay the said resolution before the President of the United States.

(Endorsement on Senate resolution of March 2d, 1849, respecting James W. Schaumburg:) Referred to the Secretary of War, March 3d, 1849. J. K. P. To be put on file in the office of the Adjutant-General. W. L. M. - 3d March, 1849.

139 EXHIBIT S.

IN EXECUTIVE SESSION.

SENATE OF THE UNITED STATES.
March 1st, 1850.

Resolved, That the resolution of the 2d of March, 1849, respecting

James W. Schaumburg, is hereby reaffirmed; and further, that the Senate considers First Lieutenant James W. Schaumburg has been improperly separated from the Army, and he is now entitled to the commission of captain in the First Regiment of Dragoons, made vacant by the resignation of Captain Eustis; and that the Secretary of the Senate present a copy of this resolution to the President.

Attest:

(Signed) ASBURY DICKENS,
Secretary.

140 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Charles S. Lincoln, clerk of the district court of the United States for the eastern district of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of the record and proceedings in the said court in a certain action of debt therein lately pending wherein The United States of America are the plaintiffs against James W. Schaumburg, George W. Page, and James Page, defendants, so full and entire as the same now remain of record in said court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said district court, at Philadelphia, this 27th day of March, A. D. 1877, and in the one hundred and first year of the Independence of the said United States.

[SEAL.] AARON S. SWARTZ,
Pro Clerk Dist. Court U. States.

141 And afterwards, to wit, on the 4th day of January, A. D. 1878, this case came up for argument, and was fully argued by counsel for the respective parties, and the same is held under advisement by the court.

And afterwards, to wit, on the 8th day of January, A. D. 1878, the court having held the same under advisement, by McKennan, circuit judge, file the opinion, which said opinion being read is in the words and figures following, to wit:

142 In the circuit court east. dist. of Penna. Error to the district court.

JAMES W. SCHAUMBURG, PL'FF IN ERROR,
vs.
THE UNITED STATES, DEF'T IN ERROR.

MCKENNAN, Cir. J.

This suit was brought by the United States, in the court below, upon the bond of the plaintiff in error, as paymaster in the Army, to recover a balance of $320, due by him in settlement of his accounts.

At the trial of the cause he exhibited proof that he was a commissioned officer of the Army of the United States, and that there was due to him a large sum for arrears of his pay as such officer. He thereupon asked the court to instruct the jury "that the defendant as well as the plaintiff is entitled to a finding by the jury of the credits, by stated amounts, in which the court may enter judgment, the finding to be in form of a special verdict." This instruction the court refused, adding, "that as this credit is admitted to exceed the whole of the plaintiff's

demand, the verdict should be for the defendant," and so the jury found generally. The refusal of the court to give this instruction is assigned for error in this court.

It is not contended, nor could it be, that the plaintiff in error could maintain a suit elsewhere than in the Court of Claims, against the United States for its indebtedness to him, nor that he could assert it as a counter demand to the claim in suit, without the authority of an act of Congress to that end. This latter privilege is accorded to him, if at all, by the act of March 3, 1797 (1 Stat. at Large, page 515), which provides, that where a suit is instituted against any person indebted to the United States, the court shall, on motion, grant judgment at the return term, unless the defendant shall, in open court, make oath or affirmation that he is equitably entitled to credits which had been, previous to the commencement of the suit, submitted to the consideration of the according officers of the Treasury and rejected, specifying each particular claim so rejected in the affidavit. It further provides that in such suits no claim for a credit shall be admitted upon the trial but such as shall appear to have been submitted to the accounting officers of the Treasury for their examination, and by them disallowed, unless it shall appear that the defendant, at the time of trial, is in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the Treasury by absence from the United States, or some unavoidable accident.

Now, there is nothing in the terms of this act which authorizes any Federal court to adjudge any sum against the United States or to render judgment for any balance of accounts in favor of a defendant who is sued by the United States, or which indicates any intended abdication by the United States of its immunity from suit. As was held in Reeside v. Walker (11 How., 290), to permit a demand in set-off to become the foundation of a judgment would be the same thing as sustaining the prosecution of a suit. Such a proceeding could not be upheld against the government except by a mere evasion, which would be as useless in the end "as it would be derogatory to judicial fairness." So, also, in De Groot v. The United States (5 Wall., 431), the court say, "no judgment can be rendered against the government, although it may be judicially ascertained that on striking a balance of just demands, the government is indebted to the defendant in an ascertained amount." See, also, United States v. Eckford (6 Wall., 484). These cases decisively sustain the refusal of the court below to give the instruction asked for, in the form in which it was asked.

But the plaintiff in error was not entitled to a finding in any form of a sum due him by the United States in excess of the claim for which he was sued. He cannot derive any aid in this direction from any State law or practice touching the right of defalcation. "This is a question which arises exclusively under the acts of Congress, and no local law or usage can have any influence upon it. The rule as to set-off in such cases must be uniform in the different States, for it constitutes the law of the courts of the United States in a matter which relates to the Federal Government." (United States v. Robeson, 9 Peters, 324.) The nature and extent of his right, then, must be determined by the import of the act of Congress conferring it.

Now, there is no good reason why an act of Congress should be construed to permit a defendant who is in default in the payment of his debt to the government, in effect and substance, to maintain a suit against it, when a like privilege is denied to all others who are in no sense delinquent unless the act plainly says so. But, as was before said, the act

of 1797, does not contemplate the adjudication of any sum against the United States. It merely enables a defendant to obtain credits to which he is "equitably entitled, which have been disallowed by the proper accounting officers, as against the debt sued for. The authorized use of them is strictly defensive, and when he has proved a sufficient counter demand to extinguish the claim against him, its statutory efficiency is completely exhausted. So it is expressly held in United States v. Eckford, supra, where the court say, "Such a claim for a credit shall be admitted, and if proved, should be allowed in reduction of the alleged indebtedness of the defendant, even to the discharge of the entire claim of the plaintiffs, but there is not a word in the provision conferring any jurisdiction upon the court to determine that the United States is indebted to the defendant for any balance, or to render judgment in his favor for the excess of the set-off over his indebtedness as proved in the trial." In every aspect of the question, then, the instruction given by the court to the jury was correct.

This is practically decisive of every other question in the cause; and it is, therefore, unnecessary to consider the remaining errors assigned upon the record. Even if sustained, no result more favorable to the plaintiff in error could be produced than the one attained. In any phase of the evidence offered by him he could not claim more than a general verdict in his favor, and that the jury, under the direction of the court, have found.

The judgment is affirmed.

143 In the circuit court of the United States in and for the eastern district Pennsylvania, in the third circuit. No. 1. April session, 1877.

JAMES W. SCHAUMBURG, PLAINTIFF IN error,
vs.
THE UNITED STATES OF AMERICA, defendant in error.

Know all men by these presents, that we, James W. Schaumburg, James F. Breul, and Alexander Thackara, are held and firmly bound unto the United States of America in the sum of five hundred dollars, lawful money of the United States of America, to which payment well and truly to be made we do bind and oblige ourselves, our heirs, executors, and administrators, and every of them, jointly and severally, by these presents. Sealed with our seals; dated this 5th day of October, A. D. 1878.

Whereas, in the above-entitled suit a judgment was rendered against the above-named plaintiff in error, to which judgment a writ of
144 error from the Supreme Court of the United States has been obtained by the said James W. Schaumburg, the same being returnable to the second Monday in October, A. D. 1878:

Now the condition of this obligation is such, that if the said James W. Schaumburg shall prosecute the said writ of error to effect, and

answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES W. SCHAUMBURG. [SEAL.]
JAMES F. BREUIL. [SEAL.]
ALEXANDER THACKARA. [SEAL.]

Sealed and delivered in the presence of us—
SAMUEL BELL.
WM. A. WILLIAMSON.

Approved.
Oct. 5, 1878.

W. McKENNAN,
Cir. Judge.

(Endorsed:) No. 1. April sess., 1877. C. C. U. S. E. D. of Pa. Schaumburg, pl'ff in error, vs. United States of America, def't in error. Bond sur writ of error. Filed October 5, 1878.

145 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct:

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in the case of Schaumburg, plaintiff in error, vs. The United States of America, defendant in error, No. 1, April session, 1877, on file, and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this seventh day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of these United States the 103rd.

[SEAL] SAMUEL BELL,
Clerk of C. C.

(Indorsement on cover:) No. 274. James W. Schaumburg, plaintiff in error, vs. The United States. E. Pennsylvania C. C. U. S. Filed 15th October, 1878.

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ADDITION TO RECORD No. 274.

In the circuit court of the United States, eastern district of Pennsylvania, No. 1, April session, 1877.

JAMES W. SCHAUMBURG, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT in error.

In error to the district court of the United States for the eastern district of Pennsylvania.

This cause came on to be heard on the transcript of the record from the district court of the United States for the eastern district of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby, affirmed.

And it is further ordered, that this formal judgment be entered nunc pro tunc as of January 8th, 1878.

(Signed) W. McKENNAN,
Cir. Judge.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct:

I, Samuel Bell, clerk of the circuit court of the United States of America, for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original order for judgment entered August 23rd, 1880, nunc pro tunc as of January 8, 1878, in the case of Schaumburg vs. The United States, No. 1, April sess., 1877, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-third day of August, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of these United States the one hundred and fifth.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

It is agreed that the foregoing may be made part of the original record in this cause without prejudice.

Jan'y 20, 1881.

WM. WHEELER HUBBELL,
For Pl'ff in Error.

EDWIN B. SMITH,
Ass't Att'y Gen'l, for Defendant in Error.

(Indorsed:) Supreme Court U. S. 1880, October term. No. 274. Schaumburg vs. U. S. Certified copy of judgment of circuit court U. S. & stipulation that same be made part of record. Filed 21 January, 1881.

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SUPREME COURT, U.S.
FILED
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JAMES H. MCKENNEY, CLERK

No. 274. October Term, 1880.

In the Supreme Court of the United States.

JAMES W. SCHAUMBURG,
PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA,
DEFENDANT IN ERROR.

Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

BRIEF OF PLAINTIFF IN ERROR.

CHARLES HENRY JONES,
GEORGE W. BIDDLE,
Of Counsel with Plaintiff in Error.

Allen, Lane & Scott, Printers, 229-231 South Fifth Street, Philadelphia.

TABLE OF CONTENTS.

	PAGE
Docket Entries	3
History of the Case	4
Bill of Exceptions	6
Argument	13
Declaration	27
Pleas	29
Replication	32
Rejoinder	33
Credits claimed by Defendant on the Trial	33
Commission as Second Lieutenant, May 10th, 1834	34
Army Register of 1836	36
Commission as First Lieutenant, July 1st, 1836	37
Letter tendering Resignation, June 6th, 1836	38
Letter of Lieutenant Schaumburg to General Macomb, covering his Resignation, from Fort Des Moines, June 6th, 1836	38
Letter of Lieutenant Schaumburg to General Macomb from St. Louis, Mo., June 10th, 1836	39
Letter from Lieutenant Schaumburg to General Macomb from New Orleans, June 20th, 1836	41
General Order No. 43, June 28th, 1836	43
General Order No. 44, June 30th, 1836	44
General Order No. 46, July 6th, 1836	45
Letter from Lieutenant Schaumburg to General Macomb from Wheeling, Va., July 12th, 1836	46
Letter from Lieutenant Schaumburg to General Cass, Secretary of War, July 12th, 1836	47
Extract from Report-Book of War Department showing Lieutenant Schaumburg's Report for Duty in Obedience to General Order No. 43, July 22d, 1836	48
Copy of Protest handed by Lieutenant Schaumburg to General Macomb, July 23d, 1836	49
Letter of L. Thomas, relative to cases of Porter and Van Ness, November 6th, 1845	50
Letter of R. Jones, relative to cases of Porter and Van Ness, June 29th, 1842	50
Letter of R. Jones, relative to Lieutenant Schaumburg's Commission as First Lieutenant, March 28th, 1845	51
Letter from Ex-President Andrew Jackson to Lieutenant Schaumburg, June 12th, 1843	52

PAGE

Decision of President Tyler, January 11th, 1844 58
Letter of President Tyler, explanatory of his Decision, January, 24th, 1845... 59
Army Register for 1845 61
Resolution of the Senate of the United States, March 19th, 1845 62
Order of Secretary Marcy directing the name of Lieutenant Schaumburg to be erased from the Army Register, March 24th, 1845 62
Letter of Secretary Marcy to Lieutenant Schaumburg, explanatory of his Order, March 28th, 1845 63
Resolution of the Senate of the United States, March 2d, 1849 63
Resolution of the Senate of the United States, March 1st, 1850 64
Communication from Senators to President Fillmore, September 26th, 1850... 64
Certificate of Dates of Appointment of Lieutenant Schaumburg as First and Second Lieutenant. 66
Letter from Secretary Floyd to Lieutenant Schaumburg, June 11th, 1859 66
Letter of Lieutenant Schaumburg to Colonel Lorenzo Thomas, April 24th, 1861 66
Letter of Lieutenant Schaumburg to Secretary Belknap, February 17th, 1873 67

Circuit Court of the United States, Eastern District of Pennsylvania.

APRIL SESSIONS, 1877. No. 1.

James W. Schaumburg, Plaintiff in Error and Defendant below, vs. *The United States of America, Defendant in Error and Plaintiff below.*	Error to the District Court of the United States for the Eastern District of Pennsylvania.

DOCKET ENTRIES IN THE COURT BELOW.

OF AUGUST SESSIONS, 1874, No. 4.

Valentine.	*The United States* vs.	Summons.
Charles H. Jones and Wm. Wheeler Hubbell.	*James W. Schaumburg, James Page, and George W. Page.*	Debt, $20,000.

1874, September 19th. *Præcipe* filed and summons exit. Returnable first Monday in October, 1874.

1874, September 28th. *Narr.* filed.

1874, October 5th. Writ returned "Served September 23d, 1874."

1874, October 20th. Rule to plead in two weeks or judgment *sec. reg.*

1874, November 3d. Pleas of the defendants filed.

1875, March 16th. Plaintiff's replication filed and rule on defendants to rejoin in two weeks or judgment *sec. reg.*

1875, March 25th. Rejoinder filed.

1875, May 17th. Mr. Jones, for defendants, moves for an order on the District Attorney for delivery to him of certain official copies of papers, &c. from records of War Department, and same day ordered that said papers be deposited with the clerk of the court, &c. And the papers having been so deposited, the court, on motion, orders the delivery of same to defendants' attorney, this order not to take effect for one week. (See minutes and the motions and orders on file.)

1875, November 23d. And now the attorney of the United States comes and suggests the death of James Page and George W. Page, two of the above-named defendants.

Eo die. And now a jury being called come, to wit (see minutes), who are respectively sworn or affirmed.

1875, November 24th. And now the jurors aforesaid, upon their oaths and affirmations aforesaid, do say that they find for the defendants. Judgment *nisi.*

1876, April 11th. Bill of exceptions filed.

HISTORY OF THE CASE.

This action was brought by the United States to recover a balance of $306.20 in settlement of the accounts of J. W. Schaumburg as paymaster in the United States Army. In defence, Mr. Schaumburg claimed as an offset that the United States were indebted to him as a commissioned officer of the United States Army in the sum of $68,140.70, and claimed judgment for the difference in his favor. Mr. Schaumburg was appointed a second lieutenant of dragoons September 19th, 1833. In 1836 his presence was required in New Orleans, on account of the sickness and death of his father. Leave of absence was refused him for that purpose, and he was forced to resign, June 6th, 1836, to take effect October 31st, 1836. He did this unwillingly, under the pressure of a sense of duty to his father, and requested that his resignation be not accepted. He

wrote to that effect to the authorities at Washington from Fort Des Moines, Iowa, June 6th, 1836; St. Louis, Missouri, June 10th, 1836; New Orleans, June 20th, 1836, and Wheeling, Virginia, July 12th, 1836. His resignation was received at the War Department, and accepted June 23d, 1836. On the 28th of June, 1836, a general order, No. 43, was issued by direction of the President, authorizing all officers whose resignations had been accepted to take effect at some prospective date to resume their duties within three months from the date of the order, when their resignations might be considered canceled. Lieutenant Schaumburg's case was within this order, and he wrote from Wheeling, Virginia, July 12th, 1836, claiming the benefit of it. On the 22d of July, 1836 (less than a month after the date of order 43), he reported for duty at the War Department. On the 1st of July, 1836, he was commissioned first lieutenant of dragoons by the President, by and with the advice and consent of the Senate. But the day previous, to wit, June 30th, 1836, General Order No. 44 announced the resignation of first lieutenant Schaumburg; this commission he never resigned. Special attention to the chronology of the case is necessary in order to understand it. Notwithstanding this, the military officials of the War Department refused to recognize Lieutenant Schaumburg as an officer of the army and assign him to duty. General Jackson, who was then President, afterwards spoke of the conduct of these officials as a premeditated wrong to Lieutenant Schaumburg, and said if he had come to him he would have righted him and punished those officials for acting as they did toward him. Against this wrong he appealed to the Secretary of War, and finally to President Tyler, who, on the 11th of January, 1844, ordered him to be recognized, and his name was printed at the head of the list of first lieutenants in the Army Register for 1845. On the 19th of March, 1845, the Senate passed a resolution that such recognition was illegal and void, and that Lieutenant Schaumburg's name ought not to be continued on the roll of the army, and transmitted a copy of the resolution to President Polk. In pursuance of this resolution, the Secretary of War announced, March 24th, 1845, that the

President directed that Lieutenant Schaumburg's name, irregularly printed in the official Army Register, should be erased from the same, "but without reproach to Mr. Schaumburg." On the 2d of March, 1849, the Senate repealed and rescinded said resolution, and resolved that the order of the President, made by reason of said resolution, should be revoked, and on March 1st, 1850, reaffirmed the resolution of March 2d, 1849, and declared that Lieutenant Schaumburg had been improperly separated from the army and was entitled to a commission as captain in the 1st Regiment of Dragoons. This resolution was followed by a memorial, signed by thirty-six of the most distinguished members of the Senate, recommending Lieutenant Schaumburg for promotion. The court below instructed the jury that Mr. Schaumburg was in the military service of the United States, as a first lieutenant of dragoons, from July 1st, 1836, to March 24th, 1845, and no longer, and was entitled to credit for the pay and emoluments as such during this period, and that as this credit exceeded the whole of plaintiff's demand the verdict should be generally for the defendant. The court declined to direct the jury that they might find a verdict against plaintiff for the amount of defendant's credits, but instructed them to find simply for the defendant. And they found accordingly.

For a full statement and discussion of Mr. Schaumburg's case, see letter of Ex-President Jackson, *post* Exhibit XIX., page 52.

BILL OF EXCEPTIONS.

BE IT REMEMBERED, That at the August Sessions, 1874, of the District Court of the United States for the Eastern District of Pennsylvania, came into court The United States of America and impleaded James W. Schaumburg, George W. Page, and James Page, in which the said plaintiff declared (*prout narr.*, page 27), and the said defendants pleaded (*prout* pleas, page 29).

And thereupon issue was joined between them, and afterwards, to wit, at a session of said court held at the city of Philadelphia, before the Honorable John Cadwalader, judge of the District

Court of the United States for said district, on Tuesday, the twenty-third day of November, A. D. 1875, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly empaneled (*prout* list of jurors), at which day came as well the said plaintiff, by John K. Valentine and Henry Hazlehurst, attorneys, as the said defendants by William Wheeler Hubbell, attorney, and the jurors of the jury aforesaid, empaneled to try the said issue, being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issue; and thereupon the counsel of the plaintiff suggested the death of both said George W. Page and James Page, two of the defendants.

And upon the trial the counsel of the plaintiff put in evidence a certain account on behalf of the United States with the defendant James W. Schaumburg, as an additional paymaster in the United States army, and claimed a balance of indebtedness due to said plaintiff by said defendants in the sum of $306.20 (*prout* same), and closed.

The defendants then by their said attorney opened in defense and claimed an indebtedness on the part of the said plaintiff to the said defendant James W. Schaumburg, as a commissioned officer of the army of the United States, in the sum of $68,140.70, in sundry items as per schedule of the same then and there exhibited in evidence (*prout* copy of the same hereto annexed, marked Exhibit I., page 33), and claimed a verdict of said jury in the several items of $280.50, $10,548.75, $57,591.95, as in said schedule specified, in the aggregate amounting to said sum of $68,140.70, and for judgment upon the same in favor of the said defendants, and against the said plaintiff.

The defendants also put in evidence before the jury a certain commission dated 10th of May, A. D. 1834, appointing said James W. Schaumburg a second lieutenant in the Regiment of Dragoons, of the army of the United States (*prout* copy of the same hereto annexed, marked Exhibit II., page 34).

And defendant also put in evidence a certain commission, dated the first day of July, A. D. 1836, appointing said James W. Schaumburg a first lieutenant in the Regiment of Dragoons,

of the army of the United States (*prout* copy of the same hereto annexed, marked Exhibit IV., page 37).

Defendant also put in evidence copies of certain papers certified by the War Department to prove that said defendant James W. Schaumburg had not resigned his said commission of first lieutenant, and was still an officer of the army of the United States, by virtue of said commission, and entitled to his pay and emoluments as such (*prout* copies of the same hereto annexed).

Defendants also put in evidence, without objection, certain papers to prove the same and diligence of the said defendant Schaumburg in asserting his claims (*prout* copies of which hereto annexed, marked—

Exhibit VII., page 39—Letter of June 10th, 1836, from defendant to General A. Macomb, commanding-in-chief United States Army, Washington.

Exhibit VIII., page 41—Letter of defendant to General A. Macomb, dated June 20th, 1836.

Exhibit XII., page 46—Letter of defendant to General A. Macomb, dated July 12th, 1836.

Exhibit XV., page 49—Letter of defendant to General Macomb, dated July 23d, 1836.

Exhibit XIX., page 52—Letter of General Andrew Jackson, ex-President of the United States, dated "Hermitage, June 12th, 1843."

Letter of defendant to L. Thomas, Assistant and Acting Adjutant-General, dated February 7th, 1845.

Defendants, to prove demand and refusal of indebtedness claimed and the amount thereof, put in evidence certain papers and also printed Army Registry, 1845, page 11. (See Appendix, page 61.)

Plaintiff, in rebuttal, offered in evidence, under certificate of the War Department, a certain copy of a paper or alleged military history, dated March 8th, 1875, to which defendants' counsel objected, and the court sustained the objection, to which the plaintiff's counsel excepted.

And thereupon the defendants' counsel agreed to admit in evidence so much of said paper as purported to be a copy of the

order of the Secretary of War, dated March 24th, 1845, and a copy of the resolution of the Senate therewith, which were accordingly admitted in evidence (*prout* copy of said paper hereto annexed, marked Exhibits XXIII. and XXIV., page 62).

Defendants' counsel, in *sur* rebuttal, produced in evidence certain resolutions of the Senate of the United States in executive session (*prout* copies of the same hereto annexed, marked Exhibits XXVI. and XXVII., pages 63 and 64).

And thereupon both sides close and the court charges the jury *inter alia.*

The court instructed the jury as follows:—

In March, 1845, the President of the United States directed that the name of the defendant (Schaumburg) be erased from the official Army Register, and by general order of 24th of March, 1845, this direction was promulgated from the War Department by the Secretary of War, with a declaration that this was done without reproach to the defendant.

The question of the power of the President to dismiss the defendant from the army is not at this day doubtful. The President had the power, and the question is whether the direction carried into effect the power in this case. The question thus becomes one of mere interpretation. What is the effect of an order of the President erasing the name of an officer from the Army Register? Its meaning, I think, is that he was dismissed from the service. The declaration that this was without reproach to him did not alter the effect of the act.

Such a declaration has not been unusual in the case of removal of a civil officer, but cannot be understood as qualifying the act.

Therefore no credit can be allowed to the defendant for pay or emoluments accruing after 24th of March, 1845.

To which instruction the defendants' counsel excepted.

The court further instructed the jury that the defendant was, from 1st of July, 1836, until 24th of March, 1845, in the military service of the United States as a first lieutenant of dragoons or cavalry, and that he is entitled as such to credit for the pay and emoluments accrued during this period.

To which instruction the counsel of the plaintiff excepted.

The court added that as this credit was admitted to exceed the whole of the plaintiff's demand, the verdict should be for the defendant.

The defendants' counsel requested the court to instruct the jury as in the following eight points:—

1. If the jury find the entry and announcement that the defendant had resigned his commission as first lieutentant was a fraud in fact upon his rights, or an error, and that he did not in fact resign his commission of first lieutenant, then the official announcement of the same is void, and his commission issued to him entitles him to pay as first lieutenant.

2. If the jury find that the defendant tendered a resignation as second lieutenant which was accepted on the 23d of June, 1836, or before the order 43, of 28th of June, 1836, to take effect July 31st, 1836, while the letter of resignation fixed the 31st of October, 1836, to which time leave of absence had been granted to him, it could not come under the order 43, to alter the time to thirty days, as that order was unknown at the time of the tender and acceptance, and that the resignation as tendered never was in fact accepted, and could not legally be made to apply to another commission issued subsequent to such acceptance.

3. That the issue of the commission as first lieutenant, on 1st July, 1836, by the President of the United States, was a waiver of all right to further proceed on the alleged acceptance of the resignation of the commission as second lieutenant by the United States.

4. That the defendant's report for duty on July 22d, 1836, at the Adjutant-General's office, was a compliance with the order 43, and vacated the right to proceed on the alleged letter of resignation.

5. That the defendant, as well as the plaintiff, is entitled to a finding of the credits at your hands by stated amounts, on which

the court may enter judgment, your finding to be in the form of a special verdict.

6. That the Army Registry is simply a piece of internal machinery of the department, and the insertion or arrangement of names on it, whether correctly printed, or needing correction, and orders in relation to it, are not orders of dismissal from the service nor a vacation of outstanding commission.

7. It is not the practice nor lawful to dismiss officers from the service except upon trial by court-martial and approval of the sentence. This is intended to apply to officers commissioned by and with the advice and consent of the Senate. There must be a trial and sentence by court-martial and order of approval and dismissal by the President.

8. That the order of 24th of March, 1845, as the act of President Polk, was not a dismissal from the service of the United States.

On the points number one to four, inclusive, the court, having already instructed the jury to find for the defendant, considers it unnecessary to give the instructions asked under these heads, and declines so to do; to which refusal under each head the defendants' counsel excepts.

The fifth instruction asked is refused, except that the court said, that if the jury have any doubt of the law of the case they may find a special verdict.

The court refused, under the sixth, seventh, and eighth heads, to give the instructions requested, and on the several subjects thereof repeated the instruction which forms the subject of the defendants' first exception.

The defendants' counsel repeated the request that the jury might be directed or allowed to specify in their verdict the several credits claimed and respectively allowed or disallowed, but the court answered that the jury ought not to be so directed, and recommended to the jury to find simply for the defendant.

To which answer the defendants' counsel excepted.

And thereupon the counsel for the defendants did then and there except to the aforesaid several instructions of the court, as follows, and assigns for error:—

First.—Because the learned judge charged the jury:—"The question of the power of the President to dismiss the defendant from the army is not at this day doubtful. The President had the power, and the question is whether the direction carried into effect the power in the case. The question thus becomes one of mere interpretation. What is the effect of an order of the President erasing the name of an officer from the Army Register? Its meaning is, I think, that he was dismissed from service. The declaration that this was without reproach to him did not alter the effect of the act. Such a declaration has not been unusual in the case of removal of a civil officer, but cannot be understood as qualifying the act. Therefore no credit can be allowed to the defendant for pay or emoluments accruing after 24th of March, 1845."

Second.—Because the learned judge refused to charge the jury as requested in the fifth instruction by the defendants' counsel, and added, "Except that, if the jury have any doubt of the law of the case, they may find a special verdict."

Third.—Because the learned judge refused, under the sixth head, to give the instruction requested by defendants' counsel.

Fourth.—Because the learned judge refused, under the seventh head, to give the instruction requested by defendants' counsel.

Fifth.—Because the learned judge refused, under the eighth head, to give the instruction requested by the defendants' counsel, and on the several subjects thereof (of said sixth, seventh, and eighth heads) repeated the instruction which forms the subject of the defendants' first exception.

Sixth.—Because "the defendants' counsel repeated the request that the jury might be directed or allowed to specify in

their verdict the several credits claimed and respectively allowed or disallowed; but the court answered that the jury ought not to be so directed, and recommended to the jury to find simply for the defendant."

And inasmuch as said instructions so excepted to do not appear of record, the said counsel for the said defendants and said counsel for said plaintiffs respectively did then and there tender this bill of exceptions to the opinion of the said court and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such cases made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the defendants and the said counsel for said plaintiffs, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this day of December, A. D. 1875.

JOHN CADWALADER. [SEAL]

ASSIGNMENT OF ERRORS.

The court below erred in refusing to sustain the following assignment of errors:—

First.—Because the learned judge charged the jury:—"The question of the power of the President to dismiss the defendant from the army is not at this day doubtful. The President had the power, and the question is whether the direction carried into effect the power in the case. The question thus becomes one of mere interpretation. What is the effect of an order of the President erasing the name of an officer from the Army Register? Its meaning is, I think, that he was dismissed from service. The

declaration that this was without reproach to him did not alter the effect of the act. Such a declaration has not been unusual in the case of removal of a civil officer, but can not be understood as qualifying the act. Therefore no credit can be allowed to the defendant for pay or emoluments accruing after 24th of March, 1845."

Second.—Because the learned judge refused to charge the jury as requested in the fifth instruction by the defendants' counsel, viz.:—

"5. That the defendant, as well as the plaintiff, is entitled to a finding of the credits at your hands by stated amounts, on which the court may enter judgment, your finding to be in the form of a special verdict;" and added, "Except that, if the jury have any doubt of the law of the case, they may find a special verdict."

Third.—Because the learned judge refused, under the sixth head, to give the instruction requested by defendants' counsel, viz.:—

"6. That the Army Register is simply a piece of internal machinery of the department, and the insertion or arrangement of names on it, whether correctly printed or needing correction, and orders in relation to it, are not orders of dismissal from the service, nor a vacation of outstanding commission."

Fourth.—Because the learned judge refused, under the seventh head, to give the instruction requested by defendants' counsel, viz.:—

"7. It is not the practice, nor lawful to dismiss officers from the service, except upon trial by court-martial, and approval of the sentence. This is intended to apply to officers commissioned by and with the advice and consent of the Senate. There must be a trial and sentence by court-martial, and order of approval and dismissal by the President."

Fifth.—Because the learned judge refused to give the instruction requested by defendants' counsel in their eighth point, viz. :—

"That the order of 24th March, 1845, as the act of President Polk, was not a dismissal from the service of the United States;" and on the several subjects thereof (of said sixth, seventh, and eighth heads), repeated the instruction which forms the subject of defendants' first exception.

Sixth.—Because "the defendants' counsel repeated the request that the jury might be directed or allowed to specify in their verdict the several credits claimed and respectively allowed or disallowed; but the court answered that the jury ought not to be so directed, and recommended to the jury to find simply for the defendant."

ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR.

I.—As to the Right of Plaintiff in Error Subsequent to March 24th, 1845.

The learned court below instructed the jury that as plaintiff in error was dismissed from the army March 24th, 1845, he has not been in the military service of the United States since March 24th, 1845, and that therefore no credit could be allowed him for pay or emoluments after that date.

This ruling constitutes one of the points raised by the assignments of error.

To fully understand this point it is necessary to go into the whole case, although it will involve a discussion of rights of plaintiff in error anterior to March 24th, 1845, which have been finally adjudicated, and are not in controversy here.

AS TO THE POWER OF THE PRESIDENT.

It can not be denied that the power to dismiss an officer has been exercised by the President, both in the civil and military service; but the ablest statesmen have differed about it, and it has been stoutly denied both before and since the power was declared to exist by Congress in 1789. This declaration was by the bare majority of fourteen in the House, and the casting vote of the Vice-President in the Senate. *4 Elliott's Debates. 404; Story on the Constitution, § 1542; 1 Benton's Abridgement, 102.*

The construction given to the Constitution in 1789 has continued to rest on this loose, incidental, declaratory opinion of Congress, and the sense and practice of government since that time.

1 Kent's Commentaries, 310.

No power of interpretation such as this should be exercised by Congress. The judiciary are the expositors of the Constitution and acts of Congress. The exposition of Congress is subject to their revision. Expositions of the Constitution by Congress are dangerous and unnatural, as tending to destroy the balance of the Constitution by interfering with a co-ordinate branch of the government, and should therefore be avoided.

4 Elliott's Debates, 403.

"The language of the Constitution is that the President shall nominate, and by and with the advice and consent of the Senate, appoint, &c. The power to nominate does not naturally or necessarily include the power to remove; and if the power to appoint does include it, then the latter belongs conjointly to the Executive and the Senate.

"Many of the most eminent statesmen in the country have expressed a deliberate opinion that the executive power of removal is utterly indefensible, and that the only sound interpretation of the Constitution is that avowed upon its adoption—that is to say, that the power of removal belongs to the appointing power."

Story on the Constitution, §§ 1537, 1543.

If the President possess any such power, it must be derived either from an express grant of the Constitution, or as a power

necessary and proper to execute some power expressly granted by that instrument. There is no such express grant of power, nor can any necessity be conceived of, not otherwise provided for, upon which to base the implication of such a power. There can be no such prerogative or absolute power under our system of government, and it cannot be acquired by prescription.

Calhoun's Works, Vol. II., page 426.

If this power had been conferred upon the President by the Constitution, Congress could not take it from him; yet not only does its recognition depend upon the interpretation of Congress in 1789, but the President has since been prohibited from exercising it, so far as civil officers are concerned, by the Tenure of Office Act of 1867, *14 Stat. at Large, 430; Revised Stat. section 1767*, and so far as military officers are concerned, by sections 1229, 1230, and 1342, article 99, of the Revised Statutes. These statutes overrule the construction of 1789. Their constitutionality has not been shaken, and their authority has been recognized by the President.

Some significance may be attached to the concluding sentence of the officer's commission, viz., "This commission to continue in force during the pleasure of the President of the United States for the time being."

This *durante bene placito* is not in any manner founded on or derived from specific legislation. The language of the Constitution (article II., section 4) is, the President "shall commission all officers of the United States."

Since the adoption of the Constitution there has been absolutely not a syllable of legislation on the form of army commissions. The old form, copied from the British commissions, has been continued, substituting "the President of the United States" for "the King." This probably was the pen-work of some clerk, or at most the hasty direction of the Secretary of War, without reflecting that the chief magistrate in a republic is not the fountain of all honor and power.

De Hart's Military Law, 242.

At best, the recital of this tenure in the commission is but the assertion of the power to dismiss by the President himself, and

is conclusive of nothing, for whilst the selection of the officer rests with him, the tenure is derived from the Constitution and the laws, and a commission is not necessary to the appointment of a public officer. *Marbury* vs. *Madison, 1 Cranch, 137.*

An office is a public station or employment conferred by the appointment of government, and embraces the idea of tenure, duration, employment, and duties.

United States vs. *Hartwell, 6 Wallace, 385.*

All officers of the United States, with the exception of officers in the army and navy, are liable to impeachment. The reason for excepting military and naval officers is that they are subject to trial and punishment according to a peculiar military code, the laws, rules, and usages of war.

Story on the Constitution, § 792.

The duration of office of officers of the army has been fixed by Congress in the articles of war.

Every officer in his personal relation to the Government is made a part of a legally organized body, and held accountable for his acts by a distinct penal code, which has provided the means of trial and mode of punishment for every breach of discipline and good order, and for every misdemeanor and crime of which he may be guilty.

De Hart's Military Law, 231.

Even those who contended for the power of the President to dismiss an officer admitted that it could only be exercised for cause, and that an improper exercise of the power by the President would subject him to impeachment.

Story on the Constitution, § 1541.

Ample provision has been made in the articles of war for all removals for cause, and no such power, therefore, is necessary in the President. In the absence of express grant and necessity, there can be no power by implication; the use of the words, "but without reproach to Mr. Schaumburg," in the order of the Secretary of War, is conclusive of the absence of cause in this case.

"No officer in the military or naval service shall in time of peace be dismissed from service, except upon and in pursuance

of the sentence of a court-martial to that effect, or in commutation thereof."

Revised Statutes, Section 1229.

"In time of peace no officer shall be dismissed except in pursuance of the sentence of a court-martial, or in mitigation thereof."

Revised Statutes, Section 1342, Art. 99.

These sections are only declaratory of existing law.

AS TO THE EXERCISE OF THE POWER IN THIS CASE.

The order of President Polk will be found in the Appendix, Exhibit XXIV., page 62.

The intention of the executive must be gathered from this order, for it is the only means selected for the expression of that intention. As it affects the legal rights of Lieutenant Schaumburg, he is entitled to a strict construction of it, and to have its language construed in the sense most favorable to those rights. It is simply to the effect that Lieutenant Schaumburg's name was irregularly printed in a certain place in the Army Register, and directs that it be erased from that place; but this is directed to be done in a manner that will bring no reproach to Mr. Schaumburg. To this extent the order goes, and no further. It might be fully carried out, and yet leave Lieutenant Schaumburg's commission in the army unimpaired. If that was not the proper place for his name, it might easily have been put in its proper place. It would be straining the language of the order, in a direction that it should not be strained, to contend that by it Lieutenant Schaumburg's rights as an officer, duly commissioned in the army, were, without cause, entirely destroyed, and his commission canceled. This could not be done without reproach to him, in violation of the express command of the order.

Lieutenant Schaumburg was not dismissed from the army by President Polk. His Secretary of War, Mr. Marcy, took it upon himself to inquire, *ex parte*, whether Lieutenant Schaumburg

was entitled to the commission which he held in the army, and he arrived at the conclusion that he was not. The distinction will be easily recognized. It is the difference between passing upon a right to an office which involves the idea of judicial inquiry, and dismissing an officer where his right is admitted, which is simply the exercise of arbitrary power regardless of right. That President Polk did not pretend to dismiss Lieutenant Schaumburg in the sense that dismissals are generally understood, is evident from an examination of the papers relating to the alleged exercise of the power in this case. The acts of the executive, and the language employed by him when he intends to dismiss an officer, are direct and unequivocal, and always for cause. But the Secretary of War, in his letter to Lieutenant Schaumburg (see Exhibit XXV., page 63), says:—"The decision of the President is that you *were not an officer of the army*," and the order "was issued to make the *correction*." In the order here referred to Lieutenant Schaumburg's military title is studiously omitted, and he is significantly styled "James W. Schaumburg, *Esquire*." It is directed that his name "*irregularly printed* at the head of the first lieutenants of the first regiment of dragoons, be erased from the same, but without reproach to Mr. Schaumburg." (See Exhibit XXIV., page 62.)

Again, Secretary Marcy, in his letter above referred to, says:—"The single question presented to the consideration of the President was *whether you were or were not then an officer of the army*, and it was decided as above stated."

This was not an exercise of the President's absolute power of dismissal. It was an *ex parte* investigation of the facts of this case, and a conclusion improperly and inconsiderately arrived at, which precluded the idea of the exercise of the power, for Mr. Marcy came to the conclusion that Lieutenant Schaumburg was not an officer of the army, and not being an officer, there was nothing upon which the power of the President could act.

If an army officer has any rights which the law will recognize, Lieutenant Schaumburg is entitled to a review of this action of the Secretary of War by this court. That the courts will re-

cognize and protect such rights is settled by the case of *Marbury* vs. *Madison*.

1 Cranch, 137.

All bodies except the supreme legislature are under law, and therefore for all transgressions of law are subject to the authority of the judicial power established by the Constitution.

Kerr vs. *Trego, 11 Wright, 295.*

The rights of Lieutenant Schaumburg were finally determined by the decision of President Tyler (see Exhibit XX., page 58,) and this decision was irreversible. President Polk had no right to reopen it. The facts of the case were unchanged. The case which Secretary Marcy assumed to pass upon was in all particulars the same which President Tyler had finally decided. President Tyler decided that on those facts Lieutenant Schaumburg was an officer in the army, and Secretary Marcy, upon the same facts, undertook to say that he was not.

It is a well-established executive rule, that the official acts of a predecessor are conclusive and binding upon his successors.

Attorney-General Wirt says upon that subject (*2 Attorney-General's Opinions, 9*):—"The preliminary question is, 'how far the present executive is authorized to review and unsettle the acts of its predecessor?' If it has such authority, the executive which is to follow us must have the like authority to review and unsettle our decisions, and to set up again those of our predecessors; and upon this principle, no question can be considered as finally settled. The establishment of such a principle, besides the uncertainty and confusion just noticed, would throw upon the executive a load of duties which it could not possibly sustain. Hence I have understood it to be a rule of action prescribed to itself by each administration, to consider the acts of its predecessors conclusive, as far as the executive is concerned. In conversing with President Adams on this subject, I understood him to concur in the general rule of considering all acts of the preceding administration as final."

Attorney-General Cushing says (*6 Attorney-General's Opinions, 509*):—"The principle which would allow a matter *done* to be

re-examined and reversed by a successor in office would equally allow the reversal to be reversed by a successor in office, and so in endless succession of reviews and reversals." It is well said by Mr. Attorney-General Toucey:—"There is no law which authorizes the head of any department to supervise the *acts* of his predecessor. It might well be asked, which of the two high functionaries, exercising the same authority, would in contemplation of law be deemed to be in the right, the one who at a proper time and on a proper occasion exercises his legitimate authority, according to his best judgment, or the one who undertook to go back into a past stage of administration and to revise and reverse the acts of his predecessor whose power was equal and identical with his own? By parity of reasoning, an act done by one President of the United States, vesting a right in a citizen, is not subject to review and reversal by his successor; for if it were, there would be no stability or security for any right of property acquired under the action of the Government."

One of the objections made to Lieutenant Schaumburg's restoration to the army was, that other promotions had been made, and rank and rights acquired, by the action of the authorities in the War Department. Admitting this to be so, the legal title of Lieutenant Schaumburg cannot be made to yield to these equities founded in the mistake of ministerial officers. *Miller* vs. *Kerr*, *7 Wheaton, 1.*

II.—As to the Right to have Judgment for Credits.

It was settled in the court below that plaintiff in error was in the military service of the United States from July 1st, 1836, to March 24th, 1845, and that he was entitled to credit for the pay and emoluments accrued during that period. That subject is not brought up before this court for review.

Those credits amount to $10,548.75 and upwards, but the learned court below refused to allow a verdict for defendant for this amount, as such finding would be an encroachment upon

the sovereign prerogatives of plaintiff, and judgment was entered generally for the defendant.

This ruling is assigned for error, and constitutes one of the points for review in this court.

This action was brought under the act of March 3d, 1797 (*1 Stat. at Large, 512; Revised Stat., sections 3624, 886, 957, 951*), which provides that where any person accountable for public money neglects or refuses to pay the balance due upon the adjustment of his account, suit shall be instituted for the recovery of the same, whereupon it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant swears that he is equitably entitled to credits, when a continuance to the next succeeding term may be granted. And it is further provided that no claim for a credit shall be admitted at the trial except such as appear to have been presented to the accounting officers of the treasury for examination and to have been by them disallowed.

The Pennsylvania defalcation act of 1705 does not apply to cases wherein the Commonwealth is plaintiff. It applies only to parties who were liable to be sued at the time the act was passed. *Com.* vs. *Matlack, 4 Dallas, 303; Com.* vs. *Johnson, 5 S. & R., 197.* The legislature did not intend to extend its terms, which are general, to claims against the Commonwealth. Not so the act of Congress of March 3d, 1797.

By this act the Government has expressly waived its sovereign immunity, and has consented to become a party to litigation in the courts. It has permitted the party with whom it may select to litigate to enforce by due process of law his demands against it, for a set-off is in the nature of an action, and was introduced to prevent circuity of action. *Com.* vs. *Johnson, 5 S. & R., 197.* To allow a set-off is, in effect, to make payment of a claim. *Ward* vs. *Johnson, Att'y-General's Opinions, Vol. I., page 590.* The Government has volunteered to subject the matters in controversy between it and the defendant to judicial investigation and determination. To that extent it has placed itself in the category of every other suitor in the courts. The only limitation is that the claim shall first have been submitted to the

accounting officers of the treasury and disallowed. In principle, every dollar that is defalked from the claim of the Government is as much an invasion of the prerogative of sovereignty as a dollar that is recovered by the defendant in excess of the claim of the Government; for so long as money remains in the hands of disbursing officers, it is as much the money of the United States as if it had not been drawn from the treasury. *Buchanan* vs. *Alexander, 4 Howard, 20.* No satisfactory reason can be given why the defendant's recovery should cease at the point where his claim has exhausted the moneys of the Government, which are presumably already in his possession, and it is necessary to resort to the public treasury for satisfaction. It is admitted that he can go in his recovery as far as the demand of the Government upon him. Why, if his claim be just, can he not go further? The question is one of prerogative and public policy, not of dollars and cents.

The Government is fully advised as to what the nature of the controversy will be from the claims which have been submitted to the accounting officers. If, then, it elects to submit the adjustment of those claims to the due process of law, it will not be denied that it is perfectly competent for it to do so. Moreover, if not satisfied, it may suffer a nonsuit. *McCredy* vs. *Fey, 7 Watts, 426.* Every legal and equitable demand in controversy between the Government and the defendant can be adjusted under the beneficial provisions of the laws upon that subject.

This is manifest from this and other statutes which are *in pari materia*, and are to be construed together. The act of May 15th, 1820, section 8 (3 Stat. at Large, 596; Revised Statutes, section 797), provides "that it shall be the duty of the clerks of the district and circuit courts, within thirty days after the adjournment of each successive term of the said courts respectively, to forward to the said agent of the treasury a list of all judgments and decrees which have been entered in the said courts respectively during such term to which the United States are parties, showing the amount which has been so adjudged or decreed for or *against* the United States, and stating the term to which execution thereon will be returnable."

The use of the words, "judgments entered against the United States," in this section, should remove all doubt from the construction of the act of 1797.

Again, the act of March 1st, 1823, 3 Stat. at Large, 770, for the prompt settlement of public accounts prior to 1815, by the proper accounting officer, authorizing them to allow credits without vouchers, expressly provides that the credits so allowed shall in no case exceed in amount the sums with which such persons are charged.

Had it been intended to impose a similar restriction upon the set-offs allowed by the act of 1797, it is reasonable to assume that the act would have so provided.

In *Van Ness* vs. *City of Washington and the United States, 4 Peters, 266,* Chief-Justice Taney, *arguendo,* says:—"It submits their rights to judicial decision. In submitting to such a trial and decision they (the Government) place themselves on the ground of contract, and waive any rights their sovereignty might give. For it would be absurd, indeed, to suppose that the United States gave to the court the mere power of hearing a cause when that hearing could produce no judicial result."

When the United States consents to be sued, and submit to judicial action, the rights of the parties are to be determined upon the same principles as between man and man.

United States vs. *Arredondo, 6 Peters, 711, 715, 719.*

In *United States* vs. *Bank of the Metropolis, 15 Peters, 377,* the Supreme Court affirmed a judgment for balance due defendant.

United States vs. *Wilkins, 6 Wheaton, 144.*

United States vs. *Jarvis, Davies' Rep., 274.*

United States vs. *Mann, 2 Brockenbrough, 9.*

United States vs. *Robeson, 9 Peters, 324.*

United States vs. *Nourse, 6 Peters, 470.*

Ibid., 9 Peters, 8.

Reeside's Ex. vs. *The United States, Devereux's Rep., 100.*

Tillou vs. *The United States, 1 N. & H., 220.*

See, also, manuscript opinion of Gilchrist, J., in *Reeside's Ex.* vs. *The United States.*

In at least three cases that have come under notice, judgment

has been entered against the United States for a balance found to be due defendant.

In the *United States* vs. *Reeside*, tried in the Circuit Court for the Eastern District of Pennsylvania, the judgment for the defendant was $188,496.06.

In *United States* vs. *Eckford*, tried in the Circuit Court of the United States for the Southern District of New York, the judgment for defendant was $20,545.50.

In the *United States* vs. *Bank of the Metropolis, 15 Peters, 377*, tried in the Circuit Court for the District of Columbia, the judgment for defendant was $3371.94 with interest, and this judgment was affirmed by the Supreme Court.

Reeside vs. *Walker, 11 Howard, 272*, was a writ of error to the Circuit Court of the District of Columbia, upon a refusal to grant a mandamus to compel the Secretary of the Treasury to pay the judgment recovered by Reeside against the United States. The judgment below was affirmed mainly upon the ground that there was no final judgment against the Government, but only a certificate under the Pennsylvania defalcation act, which would have to be enforced by *scire facias*, which was an original adversary proceeding. This objection is now removed by the act of 12th April, 1848, P. L., 537, which dispenses with the necessity of a *scire facias*, and permits execution to issue directly on the certificate, which is now a judgment.

The case of *United States* vs. *Eckford, 6 Wallace, 484*, does not state the law as it is ruled in *United States* vs. *Bank of the Metropolis, 15 Peters, 390*, and as it has been held for upwards of half a century, and as it is elaborately discussed and reviewed in *Tillou* vs. *The United States, 1 Nott & Huntington, 220*. It is ruled upon *Reeside* vs. *Walker*, which lays down no such principle, and *United States* vs. *Robeson, 9 Peters, 324*, which is to the effect only that an unliquidated claim against the United States which has been assigned to defendant could not be set-off against the claim of the Government under the act of 1797, though it could be under the laws of Louisiana, because the rules as to what might be set-off must be uniform. But the question whether on proper set-offs a judgment can be entered

against the plaintiff, is an entirely different question. It is essentially a part of the remedy, and the United States courts adopt the State remedy. *Strachen* vs. *Clayburn, 3 McL., 174, Judiciary Act of 1789, Section 34, 1 Stat. at Large, 92.*

Hinde vs. *Vattier, 5 Peters, 398.*

Clark vs. *Smith, 13 Peters, 195.*

Aspden vs. *Nixon, 4 Howard, 467.*

CHARLES HENRY JONES,
GEORGE W. BIDDLE,
Counsel for Plaintiff in Error.

APPENDIX.

DECLARATION.

In the District Court of the United States for the Eastern District of Pennsylvania. } Of August Session, 1874. No. 4.

EASTERN DISTRICT OF PENNSYLVANIA, *ss.*

James W. Schaumburg, James Page, and G. W. Page, late of the district aforesaid, were summoned to answer the United States of America of a plea that they render to the said United States of America the sum of $20,000, current money of the United States, which they owe to, and unjustly detain from, the said United States of America.

And thereupon the said United States of America, by William McMichael, their attorney, complain for that whereas James W. Schaumburg, James Page, and George W. Page, heretofore, to wit, on the fourteenth day of September, 1861, at the district aforesaid, by their certain writing obligatory, sealed with their seals and now shown to the court here, the date whereof is the day and year aforesaid, acknowledged themselves jointly, severally, and firmly, their heirs, executors, and administrators, and each and every of them, to be bound unto the United States of America in the sum of $20,000 above demanded, to be paid to the said United States of America; which said bond or writing obligatory was and is subject to a certain condition thereunder written, as follows, to wit:—That whereas the above bounden James W. Schaumburg was appointed an additional paymaster in the army of the United States aforesaid, then if the said James W. Schaumburg should well and truly execute and faithfully

discharge, according to law and to instructions received by him from proper authority, his duties as paymaster aforesaid, and he, his heirs, executors, or administrators, should regularly account when thereunto required for all moneys received by him from time to time, as paymaster aforesaid, with such person or persons as should be duly authorized and qualified on the part of the said United States for that purpose, and also refund at any time when thereunto required any public money remaining in his hands unaccounted for, then this obligation should be null, void, and of no effect; otherwise, to remain and be in full force and virtue. Nevertheless, the said plaintiffs say that the said James W. Schaumburg, after the making of the said writing obligatory, to wit, on the fourth day of April, A. D. 1871, did not well and truly execute and faithfully discharge, according to law and to instructions received by him from the proper authority, his duties as paymaster aforesaid, in that he did not then and there pay over to the said United States a large sum of money, to wit, the sum of $306.20, as required by the provisions of the act of Congress in such case made and provided, which said sum of money was then and there due the said United States by the said James W. Schaumburg in his said capacity of paymaster aforesaid, on account of moneys that theretofore had come into his possession and not paid over to the said United States.

Nor has the said James W. Schaumburg at any time since paid or caused to be paid to the said United States the said sum of $306.20 or any part thereof, although often requested so to do, but the same to pay, or any part thereof, hath hitherto wholly neglected and refused, and still doth refuse.

By reason of which breach the said writing obligatory became forfeited, and an action hath accrued to the said United States to demand and have of and from the said defendants the said sum of $20,000 above demanded.

Yet the said defendants, although often requested so to do have not as yet paid the said sum of money or any part thereof to the said plaintiffs, or otherwise, according to the writing obligatory and condition, but to pay the same or any part thereof have hitherto wholly refused, and still do refuse, to the damage

of the said plaintiffs of $20,000, and therefore they bring their suit, &c.

WM. McMICHAEL.

PLEAS.

The United States of America vs. *James W. Schaumburg, James Page, and George W. Page.*	In the District Court of the United States for the Eastern District of Pennsylvania. August Session, 1874. No. 4.

EASTERN DISTRICT OF PENNSYLVANIA, *ss.*

The defendants plead—

Payment, with leave to give defalcation in evidence.

Set off.

And for a further plea the said defendants say, that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say, that at the time of the commencement of this suit there was due and owing from the said defendants to the said plaintiff upon the said writing obligatory by the said condition thereof, a certain sum of money, to wit, the sum of $306.12 lawful money of the United States, to wit, at the district aforesaid. And the said defendants further say that the said plaintiff before and at the time of the commencement of this suit was and still is indebted to said defendant James W. Schaumburg in a much larger sum of money than the money so due and owing from said defendant James W. Schaumburg to the plaintiff—that is to say, in the sum of $100,000, for undrawn pay and emoluments of said defendant James W. Schaumburg, as an officer of the Army of the United States, unlawfully and wrongfully withheld by plaintiff from said defendant James W. Schaumburg, and also for one additional ration per diem for every five years the said defendant James W. Schaumburg has served in the army of the United

States, before and at the time of the commencement of this suit due and owing, and still due and owing by plaintiff to said defendant James W. Schaumburg in accordance with the laws of the United States, in such case made and provided, which indebtedness was duly presented to the accounting officers of the Treasury of the United States for their examination and a credit therefor demanded, which claim was by them disallowed. And defendants say that said defendant James W. Schaumburg was duly nominated and appointed, and by and with the advice and consent of the Senate of the United States, duly commissioned a first lieutenant of the First Regiment of Dragoons (now the First Regiment of Cavalry) in the army of the United States, to wit, on the first day of July, A. D. 1836, to rank, to wit, from the first day of March, A. D. 1836, and thereby became entitled to enjoy the pay and emoluments, dignities, privileges, and honors, to the said office by right belonging. That afterwards, through no fault or delinquency of his the said James W. Schaumburg, and against his wishes, and in violation of the rules and regulations for the government of the army of the United States and the law of the land, he was wrongfully and unlawfully, and arbitrarily deprived of the use and enjoyment, pay and emoluments of his said office, to wit, the office of first lieutenant of the First Regiment of Dragoons (now the First Regiment of Cavalry) United States Army, and his name arbitrarily, unlawfully, and irregularly omitted from the Army Register, to his great wrong and injury. That afterwards, to wit, on the eleventh day of January, A. D. 1844, the President of the United States, after a careful and faithful investigation of the arbitrary and unlawful conduct of his subordinates in the War Department of the United States in unlawfully depriving him, the said James W. Schaumburg, of the use and enjoyment of his said office, and the pay and emoluments thereof, as aforesaid, ordered and directed that the name of said defendant James W. Schaumburg, which had been improperly taken from the Army Register, should be replaced thereon, he having never ceased to be an officer of the army of the United States, and that the said James W. Schaumburg should be restored to the full en-

joyment of his said office, as by law and right he was entitled, and always had been entitled to enjoy it, and in obedience to said orders and command of the President of the United States, said defendant James W. Schaumburg was restored, and his name replaced upon the Army Register, to wit, at the head of the list of first lieutenants of the First Regiment of Dragoons, United States Army, according to the date of his commission and rank as aforesaid. That afterwards, to wit, on the twenty-fourth day of March, A. D. 1845, the name of defendant James W. Schaumburg was again arbitrarily and unlawfully erased from the Army Register without cause, through no fault of his, without his knowledge, and against his wishes, and by no process known to the rules and regulations for the government of the army of the United States, nor to the law of the land, but in direct violation of law, and his vested and acquired rights as a duly appointed and commissioned officer of the army of the United States as aforesaid, and to his great wrong and injury. And from that time to the commencement of this suit he has been and still is, arbitrarily and unlawfully refused his pay and emoluments, and excluded from the use and enjoyment of the honors, dignities, and privileges of his said office, to his great wrong and injury, though he has not since that time, to wit, the twenty-fourth day of March, A. D. 1845, engaged in any other employment whatever, and has ever been bodily and in all other respects able and willing to perform all the duties and requirements of his said office, and to avail himself within that time of the several promotions to superior grades of office in the said army, to which by law he was entitled by virtue of his said commission as aforesaid. Yet, notwithstanding he has never ceased, within that time, to persistently and urgently demand and require from time to time at the hands of plaintiff, all his pay and emoluments as aforesaid, and a complete restoration to all the rights and privileges, use and enjoyment of his said office, of which he has been arbitrarily, wrongfully, and unlawfully deprived as aforesaid, the plaintiff has persistently refused, and still doth refuse to pay him his undrawn pay, rations, emoluments, and salary, as aforesaid, which has been regularly appro-

priated by the Congress of the United States, from year to year, for that purpose, and to permit him to enjoy the privileges and honors of his office as aforesaid; which said sums of money so due and owing from the said plaintiff to the said defendant James W. Schaumburg, are wholly unpaid, and greatly exceed the money so due and owing from said defendants to the said plaintiff, by virtue of the said condition of the said writing obligatory, and so much of said sum of money so due and owing from the said plaintiff to defendant James W. Schaumburg as aforesaid, as shall be necessary in this behalf, they the said defendants are ready and willing, and offer to set-off and allow against the said sum of money so remaining due and payable by the condition of the said writing obligatory, and as to the balance of said sum of money, so due and owing from the said plaintiff to said defendant James W. Schaumburg as aforesaid, said defendant James W. Schaumburg asks a judgment or certificate for the same against said plaintiff, according to the form of the statute in such case made and provided. And this the said defendants are ready to verify, wherefore they pray judgment, &c.

CHARLES HENRY JONES,
Attorney for Defendants.

REPLICATION.

The United States
vs.
James W. Schaumburg et al.

In the District Court of the United States for the Eastern District of Pennsylvania.
August Sessions, 1874.
No. 4.

And the said plaintiffs, as to the plea of the said defendants by them first above pleaded and whereof they have put themselves upon the country, do the like.

And the said plaintiffs, as to the said pleas of the said defendants by them secondly and thirdly above pleaded, say that the

said plaintiffs, by reason of anything by the said defendants in those pleas alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendants, because they say that the said plaintiffs were not nor are not indebted to the said defendants in manner and form as the said defendants have above in their said second and third pleas in that behalf alleged. And this the said plaintiffs pray may be inquired of by the country, &c.

WILLIAM McMICHAEL,
Per H. P. B., Attorney for Plaintiffs.

REJOINDER.

The United States of America vs. *James W. Schaumburg, James Page, and George W. Page.*	In the District Court of the United States for the Eastern District of Pennsylvania. Of August Sessions, 1874. No. 4.

And the said defendants, as to the said replication by the said plaintiff to the said pleas of the said defendants secondly and thirdly above pleaded, and which the said plaintiff hath prayed may be inquired of by the country, doth the like.

CHARLES HENRY JONES,
Attorney for Defendants.

EXHIBIT I.

CREDITS CLAIMED BY DEFENDANT ON THE TRIAL.

Longevity Rations as Paymaster, from 5th September to 12th March, 1861—187 days, at 30 cts. per ration, 5 per day, $1.50 per day, . . .	$280 50

Credit of Pay, Rations, &c., as First Lieutenant, from 1st August, 1836, to 15th July, 1870, as per account demanded, and refused, . . .	$69,261 80
Deduct pay as Paymaster, &c., on such account as demanded, ...	1,121 01
	$68,140 79

Of this sum there was due from 1st August, 1836, to 24th March, 1845, ...	$10,548 75
And from 24th March, 1845, to 15th July, 1870,	57,591 95
	$68,140 70

UNITED STATES OF AMERICA.
WAR DEPARTMENT.
WASHINGTON CITY, May 15th, 1875.

Pursuant to the act of Congress of the 22d February, 1849, I, William W. Belknap, Secretary of War, do hereby certify that the annexed documents are true copies from the Records in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the War Department to be affixed, on the day and year first above written.

WM. W. BELKNAP,
Secretary of War.

[SEAL]

EXHIBIT II.

COMMISSION OF SECOND LIEUTENANT.

The President of the United States of America to all who shall see these presents, greeting:

KNOW YE, That reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of James W. Schaumburg, I have nominated, and, by and with the advice and consent of the Senate, do appoint him Second Lieutenant in the Regiment of

Dragoons, in the service of the UNITED STATES: to rank as such from the nineteenth day of September, eighteen hundred and thirty-three. He is therefore carefully and diligently to discharge the duty of Second Lieutenant by doing and performing all manner of things thereunto belonging. And I do strictly charge, and require all Officers and Soldiers under his command, to be obedient to his orders as Second Lieutenant. And he is to observe and follow such orders, and directions, from time to time, as he shall receive from me, or the future President of the United States of America, or the General, or other superior Officers set over him, according to the rules and discipline of War. This Commission to continue in force during the pleasure of the President of the United States, for the time being.*

Given under my hand, at the City of Washington, this tenth day of May, in the year of our Lord, one thousand eight hundred and thirty-four, and in the fifty-eighth year of the Independence of the United States.

(Signed) ANDREW JACKSON.

By the President.

(Signed) LEW: CASS,
Secretary of War.

Recorded volume 7, page 547, Adjutant-General's Office, May 10, 1834.

Official copy.

J. C. KELTON,
Asst. Adjt.-General.

(Signed) R. JONES,
Adjutant-General.

A. G. OFFICE, Feb. 5, 1870.

[ENDORSEMENT.]

II. Commission of Jas. W. Schaumburg as Second Lieutenant. Issued 4th May, 1834. To rank from the 17th Septr., 1833. (Certified copy.)

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* This sentence is without authority of law. The Constitution simply says (Article II., section 4) the President "shall commission all the officers of the United States." But no form of commission has ever been prescribed. The one in use is a copy of the British commission, *mutatis mutandis*. *De Hart's Military Law, 242.* The power of the President to dismiss cannot be predicated of a clause which the President sees fit to insert in the form of commission which he adopts to carry out the power conferred upon him by the Constitution.

EXHIBIT III.

PAGE 7 OF OFFICIAL ARMY REGISTER FOR 1836.

Dragoons—Artillery—First Regiment.

No.	Names, rank, and date of commission.	Brevets and former commissions.
6	Edward Harding, 30 May, 32	
7	Alfred Mordecai, 30 May,	
8	Benjamin Huger, 30 May,	
9	J. A. J. Bradford, 30 May,	
10	G. D. Ramsay, 25 Feb., 35	
	REGIMENT OF DRAGOONS.	
	Colonel.	
1	Henry Dodge, 4 Mar., 33	
	Lieutenant-Colonel.	
1	S. W. Kearny, 4 Mar., 33	
	Major.	
1	R. B. Mason, 4 Mar., 33	Bvt., 31 July, 29
	Captains.	
1	C. Wharton, 4 Mar., 33	Capt., 22 April, 30
2	E. V. Sumner, 4 Mar.,	
3	E. Trenor, 4 Mar.,	
4	David Hunter, 4 Mar.,	
5	Lemuel Ford, 15 Aug.,	
6	Nath. Boone, 15 Aug.,	
7	J. B. Browne, 15 Aug.,	
8	M. Duncan, 15 Aug.,	
9	D. Perkins, 4 Nov.,	
10	P. St. G. Cooke, 31 May, 35	
	First Lieutenants.	
1	I. P. Simonton, 4 Mar., 33	
2	A. Van Buren, 4 Mar.,	Aid-de-camp to Maj. Gen. Macomb A. G. M.
3	James F. Izard, 4 Mar.,	
4	L. P. Lupton, 4 Mar.,	
5	Thomas Swords. 4 Mar.,	
6	T. B. Wheelock, 19 Sept.,	
7	B. D. Moore, 19 Sept.,	
8	C. F. M. Noland, 19 Sept.,	
9	James Allen, 31 May, 35	
10	J. H. K. Burgwin, 30 June,	
11	J. S. Van Derveer, 15 Aug.,	

No.	Names, rank, and date of commission.	Brevets and former commissions.
	Second Lieutenants.	
1	A. M. Lea, 4 Mar., 33	Bvt., 1 July, 31
2	J. W. SCHAUMBURG, 19 Sept.,	
3	Enoch Steen, 19 Sept.,	
4	B. A. Terret, 7 Nov.,	
5	Wm. Eustis, 17 Mar., 34	Bvt., 1 July, 30
6	L. B. Northrop, 21 July,	Bvt., 1 July, 31
7	G. P. Kingsbury, 31 May, 35	Bvt., 1 July, 32
8	J. M. Bowman, 30 June,	Bvt., 1 July,
9	Asbury Ury, 30 June,	Bvt., 1 July,
10	Henry Turner, 15 Aug.,	Bvt., 1 July, 34
	J. H. Martindale, 1 July, 35	Bvt.
*	A. S. Macomb, 1 July,	Bvt.
	J. H. Hanly, 1 July,	Bvt.
	A. R. Johnston, 1 July,	Bvt.
	P. R. Thompson, 1 July,	Bvt.
	B. S. Roberts, 1 July,	Bvt.
	Wm. N. Grier, 1 July,	Bvt.
	FIRST REGIMENT OF ARTILLERY.	
	Colonel.	
1	A. Eustis, 17 Nov., 1834	B.G. bvt., 30 June, 34
	Lieutenant-Colonel.	
1	J. B. Walbach, 30 May, 32	Col. bvt., 1 May, 25
	Major.	
1	Wm. Gates, 30 May, 32	Bvt., 3 Mar., 23
	Captains.	
1	Milo Mason, 17 May, 16	Maj. bvt., 17 May, 26
2	F. Whiting, 10 Sept., 19	Maj. bvt., 10 Sept., 29
3	H. Saunders, 4 Nov., 23	Maj. bvt. 4 Nov., 33
4	R. M. Kirby, 5 Aug., 24	Maj. bvt., 17 Sept., 24
5	Giles Porter, 30 Sept., 33	Bvt., 1 Feb., 33
6	D. Van Ness, 23 Oct., 34	Bvt., 4 Nov.,
7	Justin Dimick, 6 April, 35	Bvt., 1 May, 34
8	Lemuel Gates, 1 Oct.,	
9	D. D. Tompkins, 31 Dec.,	

* This officer was the son of Major-General Macomb, commanding the army, and was advanced by the wrong done to Lieutenant Schaumburg.

EXHIBIT IV.

Commission as First Lieutenant.

The President of the United States of America to all who shall see these presents, greeting:

Know Ye, That reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of James W. Schaumburg, I have nominated, and, by and with the advice and consent of the Senate, do appoint him First Lieutenant in the regiment of Dragoons, in the service of the United States: to rank as such from the first day of March, eighteen hundred and thirty-six. He is therefore carefully and diligently to discharge the duty of First Lieutenant by doing and performing all manner of things thereunto belonging. And I do strictly charge, and require all Officers and Soldiers under his command, to be obedient to his orders as First Lieutenant. And he is to observe and follow such orders, and directions, from time to time, as he shall receive from me, or the future President of the United States of America, or the General, or other superior Officers set over him, according to the rules and discipline of War. This Commission to continue in force during the pleasure of the President of the United States, for the time being.

Given under my hand, at the City of Washington, this first day of July, in the year of our Lord one thousand eight hundred and thirty-six, and in the sixtieth year of the Independence of the United States.

By the President. (Signed) ANDREW JACKSON.

(Signed) Lew: Cass,
Secretary of War.

True copy from the Records of the Adjutant-General's office.

W. G. Freeman,
Asst. Adt.-Genl.

Adjutant-General's Office, October 30, 1846.

[Endorsement.]

IX. Commission of 1st Lieut. Jas. W. Schaumburg. Issued 1st July, 1836. To take rank from the 1st March, 1836. (Certified copy.)

EXHIBIT III.

PAGE 7 OF OFFICIAL ARMY REGISTER FOR 1836.

Dragoons—Artillery—First Regiment.

No.	Names, rank, and date of commission.	Brevets and former commissions.
6	Edward Harding, 30 May, 32	
7	Alfred Mordecai, 30 May,	
8	Benjamin Huger, 30 May,	
9	J. A. J. Bradford, 30 May,	
10	G. D. Ramsay, 25 Feb., 35	
	REGIMENT OF DRAGOONS.	
	Colonel.	
1	Henry Dodge, 4 Mar., 33	
	Lieutenant-Colonel.	
1	S. W. Kearny, 4 Mar., 33	
	Major.	
1	R. B. Mason, 4 Mar., 33	Bvt., 31 July, 29
	Captains.	
1	C. Wharton, 4 Mar., 33	Capt., 22 April, 30
2	E. V. Sumner, 4 Mar.,	
3	E. Trenor, 4 Mar.,	
4	David Hunter, 4 Mar.,	
5	Lemuel Ford, 15 Aug.,	
6	Nath. Boone, 15 Aug.,	
7	J. B. Browne, 15 Aug.,	
8	M. Duncan, 15 Aug.,	
9	D. Perkins, 4 Nov.,	
10	P. St. G. Cooke, 31 May, 35	
	First Lieutenants.	
1	I. P. Simonton, 4 Mar., 33	
2	A. Van Buren, 4 Mar.,	Aid-de-camp to Maj. Gen. Macomb A. G. M.
3	James F. Izard, 4 Mar.,	
4	L. P. Lupton, 4 Mar.,	
5	Thomas Swords. 4 Mar.,	
6	T. B. Wheelock, 19 Sept.,	
7	B. D. Moore, 19 Sept.,	
8	C. F. M. Noland, 19 Sept.,	
9	James Allen, 31 May, 35	
10	J. H. K. Burgwin, 30 June,	
11	J. S. Van Derveer, 15 Aug.,	

No.	Names, rank, and date of commission.	Brevets and former commissions.
	Second Lieutenants.	
1	A. M. Lea, 4 Mar., 33	Bvt., 1 July, 31
2	J. W. SCHAUMBURG, 19 Sept.,	
3	Enoch Steen, 19 Sept.,	
4	B. A. Terret, 7 Nov.,	
5	Wm. Eustis, 17 Mar., 34	Bvt., 1 July, 30
6	L. B. Northrop, 21 July,	Bvt., 1 July, 31
7	G. P. Kingsbury, 31 May, 35	Bvt., 1 July, 32
8	J. M. Bowman, 30 June,	Bvt., 1 July,
9	Asbury Ury, 30 June,	Bvt., 1 July,
10	Henry Turner, 15 Aug.,	Bvt., 1 July, 34
	J. H. Martindale, 1 July, 35	Bvt.
*	A. S. Macomb, 1 July,	Bvt.
	J. H. Hanly, 1 July,	Bvt.
	A. R. Johnston, 1 July,	Bvt.
	P. R. Thompson, 1 July,	Bvt.
	B. S. Roberts, 1 July,	Bvt.
	Wm. N. Grier, 1 July,	Bvt.
	FIRST REGIMENT OF ARTILLERY.	
	Colonel.	
1	A. Eustis, 17 Nov., 1834	B.G. bvt., 30 June, 34
	Lieutenant-Colonel.	
1	J. B. Walbach, 30 May, 32	Col. bvt., 1 May, 25
	Major.	
1	Wm. Gates, 30 May, 32	Bvt., 3 Mar., 23
	Captains.	
1	Milo Mason, 17 May, 16	Maj. bvt., 17 May, 26
2	F. Whiting, 10 Sept., 19	Maj. bvt., 10 Sept., 29
3	H. Saunders, 4 Nov., 23	Maj. bvt. 4 Nov., 33
4	R. M. Kirby, 5 Aug., 24	Maj. bvt., 17 Sept., 24
5	Giles Porter, 30 Sept., 33	Bvt., 1 Feb., 33
6	D. Van Ness, 23 Oct., 31	Bvt., 4 Nov.,
7	Justin Dimick, 6 April, 35	Bvt., 1 May, 34
8	Lemuel Gates, 1 Oct.,	
9	D. D. Tompkins, 31 Dec.,	

* This officer was the son of Major-General Macomb, commanding the army, and was advanced by the wrong name to Lieutenant Schaumburg.

EXHIBIT IV.

Commission as First Lieutenant.

The President of the United States of America to all who shall see these presents, greeting:

Know Ye, That reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of James W. Schaumburg, I have nominated, and, by and with the advice and consent of the Senate, do appoint him First Lieutenant in the regiment of Dragoons, in the service of the United States: to rank as such from the first day of March, eighteen hundred and thirty-six. He is therefore carefully and diligently to discharge the duty of First Lieutenant by doing and performing all manner of things thereunto belonging. And I do strictly charge, and require all Officers and Soldiers under his command, to be obedient to his orders as First Lieutenant. And he is to observe and follow such orders, and directions, from time to time, as he shall receive from me, or the future President of the United States of America, or the General, or other superior Officers set over him, according to the rules and discipline of War. This Commission to continue in force during the pleasure of the President of the United States, for the time being.

Given under my hand, at the City of Washington, this first day of July, in the year of our Lord one thousand eight hundred and thirty-six, and in the sixtieth year of the Independence of the United States.

By the President. (Signed) ANDREW JACKSON.

(Signed) Lew: Cass,
Secretary of War.

True copy from the Records of the Adjutant-General's office.

W. G. Freeman,
Asst. Adt.-Genl.

Adjutant-General's Office, October 30, 1846.

[Endorsement.]

IX. Commission of 1st Lieut. Jas. W. Schaumburg. Issued 1st July, 1836. To take rank from the 1st March, 1836. (Certified copy.)

UNITED STATES OF AMERICA.
WAR DEPARTMENT.
WASHINGTON CITY, May 15th, 1875.

Pursuant to the act of Congress of the 22d of February, 1849, I, William W. Belknap, Secretary of War, do hereby certify that the annexed papers are true copies of, and extracts from, original papers and the records in this department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the War Department to be affixed, on the day and year first above written.

WM. W. BELKNAP,
Secretary of War.

[SEAL]

EXHIBIT V.

LETTER TENDERING RESIGNATION.

FORT DES MOINES, June 6th, 1836.

SIR:—I herein desire that my resignation as 2d Lieut. of the U. S. Regt. of Dragoons be accepted, to take effect the 31st of October, 1836.

I have the honor to remain, very respectfully,
Your obedient servant,
JAS. W. SCHAUMBURG,
2d Lieut. U. S. Dragoons.

Hon. LEW. CASS,
Secretary of War,
Washington, D. C.

EXHIBIT VI.

LETTER OF LIEUTENANT SCHAUMBURG TO GENERAL MACOMB, COVERING HIS RESIGNATION.

FORT DES MOINES, June 6th, 1836.

SIR:—I have been compelled by urgent necessity of my presence in New Orleans, to hand to Capt. Sumner, commanding this post,

my resignation as an officer of the U. S. Regt. of Dragoons. I do so unwillingly, inasmuch as I shall leave my regiment whilst in arrest and charges against me, which I shall regret if I am denied a *trial before my resignation is accepted*, which I must here respectfully request will be afforded me. I leave here forthwith for New Orleans, where any communication with which you may honor me will be received.

I have the honor to remain, very respectfully,
Your obedient servant,
JAS. W. SCHAUMBURG,
2d Lieut. U. S. Regt. Dragoons.

Major-Gen'l A. MACOMB,
Commanding-in-Chief U. S. Army,
Washington, D. C.

[ENDORSEMENT.]

Fort Des Moines, June 6th, 1836. Jas. W. Schaumburg, 2d Lt. U. S. Dragoons. Official letter to Major-Gen'l Macomb, subject of tender of resignation. Submitted to the Gen'l, R. J. Recommended to be accepted, and to take effect 31st July, 1836. A. Macomb, M. G. June 23, 1836. Approved L. C.

EXHIBIT VII.

COPY OF LETTER FROM J. W. SCHAUMBURG TO GENERAL MACOMB, FROM ST. LOUIS, MO.

SAINT LOUIS (MO.), June 10th, 1836.

To Major-General
A. Macomb, Commanding U. S. Army, Washington, D. C.,

GENERAL:—I was compelled to write a tender of resignation of my commission as a Second Lieutenant of the Regiment of Dragoons, to be forwarded to the Department by Captain E. V.

Sumner, who was left in command of the post by Lt. Col. Kearny, who is to command the regiment at Fort Leavenworth. He left me in arrest, refusing to allow me to go to New Orleans on leave of absence granted to me by you, as endorsed on my application by the Adjutant-General, asking for leave, &c., but it was left to Lt. Col. Kearny or commanding officer, to let me go or not. This gave to Lt. Col. Kearny an opportunity to exhibit his contemptible malice against me, by sending to me the Post-Adjutant to inform me that consent was given to me to leave, but that I should not leave the post, and that for making direct application against the regulations, he would make an additional charge against me! I stated in my application, General, that I ventured to make direct application, as I believed that if I had placed in his hands my application his vindictiveness would prompt him not to forward my letter immediately, if at all, whilst he would leave me to believe he did, or that he would have written something prejudicial to my being allowed leave of absence. Lt. Col. Kearny has, in several instances, by his cavalier bearing tried to excite me to act in a way by which he could be able to make some serious charges against me. He placed me in arrest for doing what he a thousand-fold worse has done and in one case, if I had been or am brought before a court-martial, on his charges, I will present and ask for his trial, and if refused I shall have it brought to the notice of the President. Lt. Col. Kearny, when leaving Fort Des Moines in command of Captain Sumner, anticipating I would apply to the Captain to let me go on the leave of absence or furlough, directed him not to permit me to leave unless I tendered my resignation. Captain Sumner was not responsible to Lt. Colonel Kearny, or obliged to conform with his wishes, but he said, when I asked him to let me go, that must needs comply with Lt. Col. Kearny's directions or wishes, as he would soon be the commander of the regiment! To such a reply, I could say nothing, but asked the Captain if I should write a letter tendering my resignation embracing the three months' furlough, so as to allow me to go to New Orleans and to reach Washington before, if the resignation should be accepted, the

time for it to take effect, viz., the 31st *October*, and if he would urge or recommend that my earnest wish to be tried by court-martial on Lt. Col. Kearny's charges. He said, "certainly." I handed my resignation as Second Lieutenant accompanied by a letter to yourself begging you not to have it accepted or do anything until I got to Washington to explain the difficulties I have had with Lt. Col. Kearny. I have General again to ask that you will not have my resignation accepted as it is the last of my desires to leave the army, but if my resignation should be accepted, and my withdrawal of it be disregarded I must insist upon a trial upon Lt. Col. Kearny's charges. I will leave here by the first boat for New Orleans, where please address me on receipt of this.

I remain, with high respect, your obe'nt servant,

JAS. W. SCHAUMBURG,
2d Lieut. Regt. Dragoons, U. S. Army.

P. S.—I will write on my arrival in New Orleans.

EXHIBIT VIII.

LETTER FROM J. W. SCHAUMBURG TO GENERAL MACOMB, FROM NEW ORLEANS, DATE, JUNE 20th, 1836, REPORTING HIS ARRIVAL.

To Major-General A. Macomb,
Commanding U. S. Army, Washington, D. C.,

GENERAL:—I have arrived in this city and will remain only so long as the necessity of my presence may be required for the settlement or legal forms demanded in the matter of the estate. I will repair as fast as I can to Washington, to fully explain the difficulties I have had of Lt. Col. Kearny, and the circumstances respecting the forced tendering of my resignation, which I have in my letters from Des Moines and St. Louis referred to. I was compelled to hand to Capt. Sumner my letter of resignation, as Lt.

Sumner, who was left in command of the post by Lt. Col. Kearny, who is to command the regiment at Fort Leavenworth. He left me in arrest, refusing to allow me to go to New Orleans on leave of absence granted to me by you, as endorsed on my application by the Adjutant-General, asking for leave, &c., but it was left to Lt. Col. Kearny or commanding officer, to let me go or not. This gave to Lt. Col. Kearny an opportunity to exhibit his contemptible malice against me, by sending to me the Post-Adjutant to inform me that consent was given to me to leave, but that I should not leave the post, and that for making direct application against the regulations, he would make an additional charge against me! I stated in my application, General, that I ventured to make direct application, as I believed that if I had placed in his hands my application his vindictiveness would prompt him not to forward my letter immediately, if at all, whilst he would leave me to believe he did, or that he would have written something prejudicial to my being allowed leave of absence. Lt. Col. Kearny has, in several instances, by his cavalier bearing tried to excite me to act in a way by which he could be able to make some serious charges against me. He placed me in arrest for doing what he a thousand-fold worse has done and in one case, if I had been or am brought before a court-martial, on his charges, I will present and ask for his trial, and if refused I shall have it brought to the notice of the President. Lt. Col. Kearny, when leaving Fort Des Moines in command of Captain Sumner, anticipating I would apply to the Captain to let me go on the leave of absence or furlough, directed him not to permit me to leave unless I tendered my resignation. Captain Sumner was not responsible to Lt. Colonel Kearny, or obliged to conform with his wishes, but he said, when I asked him to let me go, that must needs comply with Lt. Col. Kearny's directions or wishes, as he would soon be the commander of the regiment! To such a reply, I could say nothing, but asked the Captain if I should write a letter tendering my resignation embracing the three months' furlough, so as to allow me to go to New Orleans and to reach Washington before, if the resignation should be accepted, the

time for it to take effect, viz., the 31st *October*, and if he would urge or recommend that my earnest wish to be tried by court-martial on Lt. Col. Kearny's charges. He said, "certainly." I handed my resignation as Second Lieutenant accompanied by a letter to yourself begging you not to have it accepted or do anything until I got to Washington to explain the difficulties I have had with Lt. Col. Kearny. I have General again to ask that you will not have my resignation accepted as it is the last of my desires to leave the army, but if my resignation should be accepted, and my withdrawal of it be disregarded I must insist upon a trial upon Lt. Col. Kearny's charges. I will leave here by the first boat for New Orleans, where please address me on receipt of this.

I remain, with high respect, your obe'nt servant,

JAS. W. SCHAUMBURG,
2d Lieut. Regt. Dragoons, U. S. Army.

P. S.—I will write on my arrival in New Orleans.

EXHIBIT VIII.

LETTER FROM J. W. SCHAUMBURG TO GENERAL MACOMB, FROM NEW ORLEANS, DATE, JUNE 20th, 1836, REPORTING HIS ARRIVAL.

To Major-General A. Macomb,
Commanding U. S. Army, Washington, D. C.,

GENERAL:—I have arrived in this city and will remain only so long as the necessity of my presence may be required for the settlement or legal forms demanded in the matter of the estate. I will repair as fast as I can to Washington, to fully explain the difficulties I have had of Lt. Col. Kearny, and the circumstances respecting the forced tendering of my resignation, which I have in my letters from Des Moines and St. Louis referred to. I was compelled to hand to Capt. Sumner my letter of resignation, as Lt.

Col. Kearny, anticipating that when he should leave the post that I would ask the Captain to allow me to leave for three months, as you were kind enough to consent to on my application, but unhappily leaving it to Lt. Col. Kearny's pleasure whether I could leave or not. Of course *his* pleasure was to *refuse*. When he left the post, Captain Sumner being in command, I asked him to allow me the furlough you authorized and he replied that he was very sorry he could not do so, as Lieut. Col. Kearny had enjoined him to not let me go unless on the tender of my resignation! To enable me to discharge a sacred duty, I was compelled to make the sacrifice but hoping that my resignation would not be accepted under the circumstances and as I stated and requested in my letter accompanying letter of resignation, and now I have again to ask you not to have it accepted and to consider this as my withdrawal of the tender as it was only written to enable me to do what my father enjoined upon me in his last moments to do. But if my wishes in that regard be not accorded then I must insist upon having a trial upon Lt. Col. Kearny's charge or charges. If I have committed any serious offense for the good of the service I should be punished, but if my arrest for eight months and to have been held within the limits of the garrison was necessitated from no serious misconduct upon my part, I presume you would say there is reason for my trial, but if on the contrary the course pursued towards me was malicious and without reason I ought to have the benefit of an acquittal and my prosecutor held to answer for his abuse of his authority. I hope, General, you will coincide with these views and give me your approval.

I have to request, General, you to write to me when my letters from Fort Des Moines, 6th instant, are received and that you have concluded to await my arrival in Washington, or that if my resignation be not accepted that you will direct me to return to my post and await for a court-martial there.

I have the honor to remain

Your very obedient servant,

JAS. W. SCHAUMBURG,

2d Lieut. Regiment Dragoons, U. S. A.

EXHIBIT IX.

GENERAL ORDER No. 43.

HEADQUARTERS OF THE ARMY, ADJUTANT-GENERAL'S OFFICE, WASHINGTON, June 28th, 1836.

* * * * * * * * * * *

V. "A due regard to the public interest, and the good of the service, no longer justify the practice of granting long leaves of absence on the acceptance of the resignations of officers of the Army. Indulgences ought not to be expected, nor can they be accorded to an officer, when the public interest may be concerned, and his presence, or the performance of *duty* be necessary."

The PRESIDENT accordingly has been pleased to direct, that—

1. "In time of active service, and the employment of the army in the field, as is now the case in Florida and elsewhere, if the resignation of any officer be accepted, it shall take effect within thirty days from the date of the order of acceptance, and the vacancy be immediately filled by the next officer entitled to promotion, who will forthwith proceed to the station of the officer resigned, and there relieve him in his duties.

2. "All officers now absent on leave, with a view of quitting the army, and whose resignations have been so far accepted as to have been permitted to take effect at some prospective date, are hereby required, at the expiration of three months from the date of the order of acceptance, either to resume their duties as officers of the army or then vacate their commissions. If any officer choose the former, and join his regiment or corps, his resignation may be considered as cancelled. The officers so absent will make their election, and report to the Adjutant-General accordingly."

VI. In conformity with the 2d paragraph of the foregoing regulations, *leaves of absence*, heretofore granted with a view of retiring from service, for any period exceeding three months, are hereby countermanded; and any officer so absent will immediately report for duty, or consider his resignation as taking effect

from this date. The same rule will apply to other officers now absent under like circumstances of prospective resignation at the expiration of three months, computing the time from the date of the official notification of acceptance.

VII. The practice of commanding officers assuming authority to grant leaves of absence to officers on tendering their resignations, is disapproved, it being contrary to the rules of service. Letters of resignation, hereafter, will be forwarded to the Adjutant-General, for decision, at the War Department.

By order of Major-General Macomb.

R. JONES,
Adjutant-General.

EXHIBIT X.

GENERAL ORDER, No. 44.

ADJUTANT-GENERAL'S OFFICE, WASHINGTON, June 30th, 1836.

The following resignations have been accepted by the President, to take effect at the dates set opposite their respective names, to wit:—

First Lieutenant J. W. SCHAUMBURG, 1st Dragoons, 31st July, 1836.

Brevet 2d Lieutenant R. King, Corps of Engineers, 30th September, 1836.

Brevet 2d Lieutenant A. V. Brumley, 1st Artillery, 30th June, 1836.

By order of Major-General Macomb.

R. JONES,
Adjutant-General.

EXHIBIT XI.

GENERAL ORDER No. 46.

HEADQUARTERS OF THE ARMY, ADJUTANT-GENERAL'S OFFICE, WASHINGTON, July 6th, 1836.

PROMOTIONS AND APPOINTMENTS IN THE ARMY, SINCE THE FIRST OF JANUARY, 1836.

1.—PROMOTIONS.

* * * * * * * * * * *

First Regiment of Dragoons.

Lieut.-Col. Stephen W. Kearny, to be Colonel; 4th July, 1836; vice Dodge appointed Governor of the Territory of Wisconsin.

Major Richard B. Mason, to be Lieut.-Colonel; 4th July, 1836; vice Kearny promoted.

Captain Clifton Wharton, to be Major; 4th July, 1836; vice Mason promoted.

1st Lieut. Isaac P. Simonton, to be Captain; 4th July, 1836; vice Wharton promoted.

2d Lieut. J. W. SCHAUMBURG, to be 1st Lieut.; 1st March, 1836; vice Noland resigned.

2d Lieut. Enoch Steen, to be 1st Lieut.; 5th March, 1836; vice Izard deceased.

2d Lieut. Burdett A. Terrett, to be 1st Lieut.; 31st March, 1836; vice Lupton resigned.

2d Lieut. Wm. Eustis, to be 1st Lieut.; 15th June, 1836; vice Wheelock deceased.

2d Lieut. Lucius B. Northrop, to be 1st Lieut.; 4th July, 1836; vice Simonton promoted.

Brevet 2d Lieut. ALEXANDER S. MACOMB, to be 2d Lieut.;

1st March, 1836; vice Schaumburg promoted; (Bvt. 1st July, 1835.)

* * * * * * * * * * *

By order of Major-General Macomb.

R. JONES,
Adjutant-General.

NOTE.—The resignation of First Lieutenant Schaumburg was announced June 30th, 1836, in General Order No. 44. *Ante*, EXHIBIT X., page 44. This announcement was untrue, because Lieutenant Schaumburg never resigned his commission as First Lieutenant. See letter of Adjutant-General Jones, *post* Exhibit XVIII., page 51. This fact was afterwards acknowledged by the authorities in the above General Order No. 46, July 6th, 1836, which announced the promotion of Second Lieutenant Schaumburg to be First Lieutenant, to date from March 1st, 1836. This last commission he never resigned, nor in any manner forfeited.

EXHIBIT XII.

LETTER FROM J. W. SCHAUMBURG TO GENERAL MACOMB, FROM WHEELING.

WHEELING, W. VA.,
July 12th, 1836.

To Major-General Macomb,

MY DEAR GENERAL:—I enclose to you a letter to the Secretary of War, which please hand to him. I arrived here a few hours ago, and was informed that my resignation had been announced, but that the General Order No. 43, by direction of the President, would apply to me and that if I desired to continue in the army, I could do so by reporting for duty. I shall be in Washington in a few days—as I must stop a while to see my family—to report to you and to comply with the directions of the President and receive orders for service.

I have the honor to remain
Your very ob. serv.,

JAS. W. SCHAUMBURG,
2d Lieut. Regt. Dragoons, U. S. A.

EXHIBIT XIII.

LETTER FROM J. W. SCHAUMBURG TO GENERAL LEWIS CASS, SECRETARY OF WAR.

WHEELING, W. VA.,
July 12th, 1836.

To Hon. Lew. Cass,
Secretary of War,

SIR:—Having just arrived, and been informed of the General Order No. 43, June 28th, 1836, by direction of the President, I hasten to inform you that I wish to have the privilege allowed by the President. Having tendered my resignation under forced circumstances, contrary to my wishes I am happy to be enabled to continue in the Army of my Country in which my father for a long time in the early days had served. I shall in a few days report in person to the Adjutant-General, as directed by the General Order. By this I mean that I withdraw my tender of resignation before its acceptance shall take effect.

I have the honor to remain,
Very respectfully, your servt.,

JAS. W. SCHAUMBURG,
2d Lieut. Regt. Dragoons, U. S. Army.

Extract from Report-book of War Department, showing Lt. Schaumburg's Report for Duty in Obedience to Order No. 43.

REPORT BOOK.					REMARKS. *The officer will set opposite the Record of his name* the occasion of his presence, and the number of the order authorizing it will be specified.	
DATE OF ARRIVAL.	NAMES.	RANK.	REGIMENT.	LODGINGS.	DATE OF DEPARTURE.	
1836. 22d July.	Jas. W. Schaumburg.	2d Lieutenant.	1st Dragoons.	Fuller's.		On leave of absence and report for duty in obedience to General Order 43.

EXHIBIT XV.

COPY OF PROTEST HANDED BY J. W. SCHAUMBURG TO MAJOR-GENERAL MACOMB.

WASHINGTON, D. C.,
July 23d, 1836

GENERAL:

I have come to the seat of government "to report to the Adjutant-General," in obedience to the 2d paragraph of General Order No. 43, dated June 28th, 1836. I avail myself of the provision of this order of the President offered to officers of the army whose resignations have been received and accepted *before* the publication of that order. I have been denied this, and am told that the 2d paragraph does not cover my case, and that my resignation, as accepted and published in General Order No. 44, dated June 30th, 1836, is good against me. I now enter my solemn protest against this proceeding, and deny that the tender of my resignation of *second* Lieutenant, to take effect the 31st of October, 1836, has been so accepted, and claim not only the benefit of the 2d paragraph of the President's directions, but also to be recognized as a *first* Lieutenant by promotion and confirmation by the Senate, and my commission as such, which I have not resigned.

I am respectfully, your
Obt. Serv't,

JAMES W. SCHAUMBURG,
1st Lieut., Regt. U. S. Dragoons.

MAJOR-GEN'L A. MACOMB,
Commanding U. S. Army,
Headquarters, Washington.

EXHIBIT XVI.

ADJUTANT-GENERAL'S OFFICE,
WASHINGTON, November 6th, 1845.

Mr. J. W. Schaumburg,
Philadelphia, Penna.,

SIR:

* * * * * * * * * * *

As perhaps being sufficient for your purpose, I can state that both Captains G. Porter and D. Van Ness, 1st Artillery, tendered their resignations in the early part of June, 1836, to take effect at prospective dates, which resignations they were permitted to recall under the provisions of "General Orders" No. 43, paragraph 2, dated June 28, 1836.

* * * * * * * * * * *

I am, sir, very respectfully, your obedient servant,

L. THOMAS,
Asst. Adjt.-Gen'l.

NOTE.—This letter, and the following, were offered to show that in two cases precisely similar in all respects to the case of Lieutenant Schaumburg, the full benefit of Order 43, *ante*, EXHIBIT IX., page 43, was allowed them, while at the same time his rights under it, without any cause, were entirely ignored.

EXHIBIT XVII.

[EXTRACT.]

WASHINGTON, June 29th, 1842.

Mr. J. W. Schaumburg,
Washington, D. C.,

SIR:

* * * * * * * * * * *

The letters of resignation of Captains Porter and Van Ness were received at this office June 23d and 22d, 1836.

Their resignations were never announced in orders, they having been authorized to withdraw them.

In answer to your further inquiry relative to the annunciation of your resignation in 1836, my impression is, though I am not positive, that the fact of acceptance by the Executive was known, and that your letter had been returned from the War Office before the publication of the Regulation of June 28, 1836.

I am, sir, very respectfully, your obedient servant,

R. JONES,
Adjutant-General.

EXHIBIT XVIII.

ADJUTANT-GENERAL'S OFFICE,
WASHINGTON, March 28th, 1845.

SIR:

* * * * * * * * * * *

To your fourth, sixth, and seventh inquiries, and the other portions of your letter, an answer cannot be given, except that, if it be of any interest to you to be officially informed, I may state that you did not tender your resignation as a first lieutenant —you not having received your promotion at the time your letter of resignation was written, to wit, June 6th, 1836.

I am, sir, very respectfully, your obedient servant,

R. JONES,
Adjutant-General.

J. W. SCHAUMBURG, Esq.,
Washington, D. C.

NOTE.—If this fact was untrue, why was it officially announced in General Order No. 44, *ante*, EXHIBIT X., page 44, unless it was from some sinister motive on the part of the military authorities in the War Department?

EXHIBIT XIX.

Letter from ex-President Andrew Jackson to J. W. Schaumburg.

The Hermitage, June 12th, 1843.

Lieutenant James W. Schaumburg, Philadelphia, Pa.,

My dear Sir:—I received your letter, with a statement and accompanying documents relating to your having been irregularly put out of the army. The letter of Senator Dr. Linn urges me to particularly examine all the papers, and as you, also, desire me to do so, and to write my opinion of the case, I would have done so before this, but that I have been so feeble, and even now I am suffering much pain, and can write but little at a time; but I must get through with it now I am somewhat better. I am the more induced to do so as I am so much impressed with the great wrong done you by the officials of the War Department.

I first note that you were stationed at Fort Des Moines, on the Upper Mississippi, and that you had learned from your family at New Orleans your father was sick and could not survive many weeks, and you applied to your commanding officer, Lieutenant-Colonel S. W. Kearny, to then allow you to go to New Orleans to visit your good father, fearing he would not live until a leave of absence could be granted and come from Washington. This reasonable request to leave was refused by Lieutenant-Colonel Kearny, which was very unfeeling and discreditable to him, as such an indulgence, when no great public necessity forbade your leaving your post, should have been granted. There appears to have been no such obstacle; and, therefore, the refusal could only have been owing to personal ill-will or a degree of insensibility unbecoming any officer.

The refusal of your commanding officer compelled you to write to Washington for a leave of absence to enable you to go and see your dying parent. Some weeks elapsed before your application was returned. The commanding general endorsed on your application that the leave for three months to go to New Orleans would be granted, providing the commanding officer should deem it proper to allow it. This was no better than a refusal, as it left it to be granted or not to your commanding officer, who had improperly refused you. He did not think it proper to grant it. It appears that Lieutenant-Colonel Kear-

ny had placed you in arrest, though no charges were ever presented against you, and he based his refusal to allow you a furlough because he expected a court-martial would some time or other convene for your trial, and you could not leave. You remained in arrest over eight months; no court was ever ordered for your trial, and no charges were ever written or presented against you, and Lieutenant-Colonel Kearny himself was ordered away from the post, and you still in arrest up to the 6th of June, 1836.

Colonel Kearny having left you at the post under command of Captain E. V. Sumner, Colonel Kearny instructed him (Captain Sumner) to hold you in arrest. After Lieutenant-Colonel Kearny left, you applied to Captain Sumner to grant you the leave sent from Washington, which left it to the commanding officer to grant or not. Captain Sumner answered that he could not let you go, for the reason that Colonel Kearny had instructed him on leaving not to grant it. This was not creditable to Colonel Kearny, and Captain Sumner, being commanding officer of the post, was not under Colonel Kearny's orders after he had left to command elsewhere; the responsibility for your presence or absence was not upon Colonel Kearny but upon Captain Sumner, and, had he granted you the three months' leave sent from Washington, he was not responsible for your absence. Captain Sumner refused to let you go for the reason stated, and finding yourself thus blocked, and, as it strikes my mind forcibly, the purpose aimed to be accomplished was attained—you wrote a letter of resignation on the 6th of June, 1836, to the Secretary of War, requesting the acceptance of your resignation, *to take effect the 31st of October following.*

You were a second lieutenant of the regiment of dragoons. Accompanying this letter was your letter to General Macomb, general commanding-in-chief, expressing your sincere regret in being thus obliged, to enable you to go to New Orleans, to write your resignation, the more so as you were in arrest with charges alleged against you, and you expressed an earnest wish that your resignation would not be accepted; at least, not until you had an opportunity to defend yourself before a court-martial. This was as honorable to you as your request was reasonable, and should have been so appreciated by the commanding general. Captain Sumner very properly recommended in his letter to the adjutant-general, covering your tender of resignation and your letter requesting an investigation, that your earnest request should be granted.

Your reasonable and honorable request, which Captain Sumner, with good feeling, thought should be granted to you, was disregarded, and the time conditioned in your letter for your resignation to take effect, to wit, the 31st October, was shortened, without your consent, full three months, and you were not notified or informed that the time fixed by you should be shortened; and Lieutenant-Colonel Kearny wrote to the adjutant-general, expressing his most sincere hope that you would not be permitted to withdraw your resignation, which was an impertinent officiousness, as it was from personal feeling against you, and none of his business. The Special Order No. 44, dated 30th June, 1836, says:—The following resignations have been accepted by the President, to take effect at the dates set opposite their names, respectively, and your name is given in the list as resigning as first lieutenant, and the date for it to take effect the 31st July, 1836.

The letter you wrote was of your resignation of the office of second lieutenant, and not that of the higher office of first lieutenant, which, as you did not resign, the executive, or "proper authorities," could not have accepted, as stated in the general order. You were some time before entitled to be a first lieutenant, but at the period of writing your resignation you were a second lieutenant, not having been promoted or notified of your promotion. If you had been you would not have written your resignation and signed yourself as a second lieutenant. You conditioned your termination of service to be the 31st of October. One thing or the other, if an officer has a right to specify the time to which his services end, and if the authorities are unwilling to allow the time it is for them so to acquaint him and say what time would be allowed. If he liked the terms he would agree, and if he did not he would remain; but the authorities have no right to alter the time by an arbitrary order. I would not have permitted such a thing to be done.

An officer's commission in the military service of his country is a vested right which he holds under the laws for the government of the army and navy, and cannot be infringed upon. I consider the pretended acceptance of your resignation of your office of second lieutenant as an official misdemeanor, which, had you brought the facts to my knowledge when I was President I would have dismissed the officers who so disgracefully connived at your separation from the army, as the facts in your case exhibit in the documents before me.

I notice in the Army Register in the list of officers below you in the regiment, the name of A. S. Macomb, as a brevet second

lieutenant, and that the acceptance, as alleged, of your resignation, advanced that officer, and he is a son of the commanding general, by whose orders the special order, promulgating your resignation, was issued by the adjutant-general, who should not have obeyed or countenanced the command, as he must have known it was a false proceeding. It appears you went to New Orleans as expeditiously as you could, and made haste to go to Washington to prevent your resignation from being acted upon. You wrote from St. Louis, New Orleans, and Wheeling, to the adjutant-general, and to General Macomb, asking not to act upon your resignation; and at Wheeling you wrote to claim the benefit of the President's directions, published in General Order No. 43, dated June 28th, 1836.

This order, I remember, to have directed the adjutant-general to issue. It was intended to put a stop to officers resigning on long leaves of absence from service in Florida and elsewhere, and to permit all officers who were, anterior to the date of the order, absent on leave, by tender of resignation, to have the privilege of continuing, by reporting for duty within three months, their resignations should be canceled, and all such as did not elect so to do, their leaves of absence or the time for their resignations to take effect would be shortened to three months from the date of acceptance.

As your resignation was dated on the 6th June, twenty-two days before the date of the order, viz., the 28th June, you were entitled to the privilege expressed in the second paragraph, which referred to all such as had resigned at some date anterior to the date of the order. Your resignation was received, as appears by the adjutant-general's endorsement, 23d June, which was five days before the date of the order. If this is denied, and the only proof that it was accepted *after* is the order No. 44, 30th June, in which your name is mentioned as resigning your office of first lieutenant, and as accepted to take effect the 31st of July, dated *two* days after the order No. 43, viz., the 30th of June, then it convicts the military officials of the War Department of a premeditated purpose to exclude you from the privilege of the paragraph which was to cover all resignations offered or accepted before the date of the order, and it is clear that the purpose was to exclude you by saying your resignation was comprehended under the prospective paragraph of the Order 43, which could not possibly be so, as the paragraph was notice to all who resigned *after the date* of the order that their resignation, if accepted, would be accepted to take effect thirty days after the date of acceptance.

Your tender of resignation was twenty-two days before the date of the Order 43, and the excluding you from it under the prospective paragraph was dishonest, and such an act should be severely punished. The integrity of the records of the adjutant-general's office by that act against you carries with it a blemish which should be wiped out. It appears that you went to Washington and reported to the adjutant-general, claiming the benefit of the President's directions contained in the General Order No 43, and you were answered that your resignation had been accepted, to take effect the 31st July, 1836.

According to the second paragraph of General Order No. 43, you reported in person on the 22d of July. The order allowed to all officers whose resignations *had been* accepted to take effect at some prospective date, who would "elect" to continue in the service three months to join their corps or regiment. You went to the general-in-chief to report yourself, and ask that the matter might be corrected. He answered that nothing could be done. Your resignation was accepted, to take effect as stated in the Special Order No. 44, to wit, the 31st of July, and it could not be canceled.

You protested in writing against this order, and, claiming the benefit of the President's directions, as you had come to report for orders to return to duty, and that the Order 44 was false in saying the President had accepted your resignation of your office of first lieutenant, which you had not resigned, you stated that, as neither the general-in-chief nor the adjutant-general would do anything in the matter, you called on the Secretary of War, and, stating the facts to him, he said you should be righted, but asked you to let the matter rest, as it would be embarrassing to revoke or cancel the Order 44, and that, on the occurrence of a vacancy of first lieutenant you would be ordered back to your regiment. Upon this assurance of the Secretary of War, General Cass, you went to your home to await a vacancy of first lieutenant and orders thereon.

General Cass left the War Department before a vacancy occurred; at all events, you were not afterward ordered to return to duty. You sometime after wrote to Mr. Poinsett, Secretary of War, who succeeded General Cass. He answered you that he could not see any difference in your resignation or the acceptance of it from any ordinary resignation, and, therefore, he could not order your name to be replaced on the army roll. Mr. Poinsett came to this conclusion by relying upon the adjutant-general's report of the facts, which does not truly represent the facts of record. If Mr. Poinsett had examined with half an eye the

correspondence and the orders he could not have failed to discover the wrong done to you, and a violation of official integrity, amounting to dishonesty.* Your application failing here, you should have applied to the President.

Your next application was to Secretary Spencer, Secretary of War, now or lately under the present Chief Magistrate, as appears from your memorial. Mr. Spencer answered somewhat as Mr. Poinsett, that he considered your resignation as perfect and effectual, as accepted to take effect the 31st of July, and then stultified the assertion by saying you were entitled to be paid as a first lieutenant up to the 31st of October, the period specified in your letter of resignation.

Now, if your resignation, as alleged to have been accepted to take effect the 31st of July, was, as he says, "perfect and effectual," you certainly were not an officer *after* that date; and not being an officer, you could not receive pay, &c. up to the 31st of *October*—that is, for three months. If you were entitled to pay, &c. up to the latter date, then you were still in the service, for you could not be in as to pay and out as to commission. So Mr. Spencer's argument or reasoning was mere nonsense, neither agreeing with facts nor logic. Mr. Spencer, as you rightly suspected, acted upon the misrepresentations of the adjutant-general and prejudicial counseling of General Scott, whose well-known exquisite sense of justice and right is regulated according to his personal inclinings and perverted conceptions.

I have gone through the memoranda and the various documents, and as I progressed my interest was excited, for the case presented in itself so much of wrong—premeditated wrong by high officials—I felt that I should examine it thoroughly with

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*Mr. Secretary Poinsett, in reply to the application of Lieutenant Schaumburg to be reinstated, said, "After examining all the documents in this case, I do not perceive any difference in this from an ordinary resignation accepted in the usual manner. Lieutenant Schaumburg, late of the army, cannot be restored to the service.—J. R. P." This conclusion was arrived at upon a state of facts furnished to the Secretary by the Adjutant-General, which statement was not true. For instance, he stated that Lieutenant Schaumburg's resignation was accepted under paragraph 1 of General Order No. 43, *ante*, Exhibit IX., page 43, and that paragraph 2 was not applicable to his case, as his resignation was accepted after the publication of Order No. 43. Both these facts are false, as the papers and records herewith produced abundantly show. See endorsements on letter of resignation, *ante*. Exhibit VI., page 39, whereby it appears that the resignation was received and accepted June 23d, 1836, five days before the date and publication of Order No. 43, viz., June 28th, 1836; and also *ante*, Exhibit XVI., page 50, and Exhibit XVII., page 50, which clearly show that the facts of Lieutenant Schaumburg's case did entitle him to benefit of paragraph 2 of Order 43. The Adjutant-General's report to Secretary Poinsett was made on the 20th of October, 1839. If the facts had been truthfully stated by the Adjutant-General to Secretary Poinsett, it is confidently believed his decision would have recognized the rights of Lieutenant Schaumburg.

Major Donelson, and I write out my understanding of the matter, notwithstanding I am in constant pain and have to rest very often; but it is on the side of justice and right I am engaged. You have been very improperly treated, and, had you come to me after General Cass left the War Office, I should have righted you and punished Macomb, Jones, and Kearny for acting as they did towards you, and the official records been cleared of falsification.

I say you have never ceased to be in the army. Your resignation amounted to nothing. You did not resign your office of first lieutenant. You were fully entitled to the benefit of my directions published in General Orders No. 43, as you applied for orders under it. You were fairly and justly so entitled, and your constant efforts to have your rights recognized is creditable to you. I hope you will persevere.

If I were President I would put you back if it made you colonel of the regiment; and I hope President Tyler, to whom you should appeal, will order your reinstatement and promotion to the position your commission as first lieutenant and the laws entitle you to. You are at liberty to show this letter to the President.

I remain, very respectfully, your friend,

ANDREW JACKSON.

EXHIBIT XX.

Decision of President Tyler.

The claim of Lieutenant Schaumburg to be reinstated in the army has been duly considered by the President of the United States. On a careful examination of all the facts and circumstances, he is of opinion that Lieut. Schaumburg was entitled to the benefit of the Order No. 43, dated 28th June, 1836, issued by direction of the President, and agreed to accept its terms within the proper time.

The President therefore directs that Lieutenant Schaumburg be restored to the Army on the happening of the first vacancy

of Captain in the 1st Regiment of Dragoons—and that if prior to the happening of a vacancy in the grade of Captains a vacancy shall occur in the grade of first Lieutenants he be placed at the head of the list of first Lieutenants, to be promoted to the rank of Captain as soon as a vacancy shall occur in that grade, but, as Lieut. Schaumburg has been thrown out of service by his own act of resignation, and considering the decisions of the Secretaries of War heretofore on his case, it is ordered, that his pay and emoluments shall only take effect from the time of his restoration to the service by the occurrence of a vacancy.

J. TYLER.

January 11th, 1844.

EXHIBIT XXI.

Letter of President Tyler Explanatory of his Decision.

"Washington, January 24th, 1845.

"My dear Sir:

"In reply to your letter of the 23d inst., I have only to say, that, upon a thorough and minute examination of your case and a most patient and elaborate examination of all its facts and circumstances, I came to the conclusion that you had never been properly out of the army. That you had complied in all things with the spirit and intent of the General Order No. 43, dated 28th June, 1836, and had accepted its terms, and that yours was not a case for *reappointment* but for restoration, or more plainly to speak, of *recognition*. You were therefore ordered to be restored to your former rank and *recognized* (for that is the true meaning of the order) as never having been out of the army. You were in my view fairly to be considered as entitled to the position which you would have occupied if you had been constantly under orders, but as others had in the meantime met with promotion, and, what I must regard as blunders,

separated you from the service, I deemed it best to waive all controversy by restoring you to your original rank; and allowing pay for the time designated in my order, coupled with the direction of your nomination for a captaincy upon the first vacancy. This arrangement met with your entire concurrence, so as at the same time to settle both questions of rank and pay. I have not esteemed it necessary, nor can I consider it so, to nominate you for your present rank to the Senate, and this the Secretary of War fully understands.

"With sentiments of high respect,

"Yours, &c., &c.,

"JOHN TYLER.

"LIEUT. SCHAUMBURG."

EXHIBIT XXII.

PAGE 11 OF OFFICIAL ARMY REGISTER FOR 1845,

SHOWING THE NAME OF J. W. SCHAUMBURG PLACED AT THE HEAD OF THE FIRST LIEUTENANTS BY THE ORDER OF PRESIDENT TYLER, TO BE FIRST PROMOTED TO RANK AS CAPTAIN ON THE HAPPENING OF THE FIRST VACANCY, TO DATE FROM THE 31st DECEMBER, 1840.

First Regiment of Dragoons.

NAME.	Rank in the Reg't.	Rank in the Army.		Date of first appointment.		Born in	Appointed from
Colonel.							
Stephen W. Kearny,	4 July, 36			1 lt. inf.,	12 Mar., 12	N. J.	N. Y.
Lieutenant Colonel.							
Richard B. Mason,	4 July, 36			2 lt. 8 inf.,	2 Sept., 17	Va.	Va.
Major.							
Clifton Wharton,	4 July, 36			2 lt. 1 art.,	28 Oct., 18	Pa.	D. C.
Captains.							
Edwin V. Sumner,	4 Mar., 33			2 lt. 2 inf.,	3 Mar., 19	Mass.	Mass.
Eustace Trenor,	4 Mar.,			2 lt. 4 inf.,	1 July, 22	N Y.	M. A.
Nathan Boone,	15 Aug.,			Capt. m. ran.,	16 June, 32	Ky.	Mo.
Philip St. G. Cooke,	31 May, 35	{ Assistant Quar-		Bvt. 2 lt. inf.,	1 July, 27	Va.	M. A.
Thomas Swords,	3 Mar., 37	{ termaster.		Bvt. 2 lt. 4 inf.,	1 July, 29	N. Y.	M. A.
Benjamin D. Moore,	15 June,			1 lt. m. ran.,	6 Nov., 32	Ky.	Ill.
James Allen,	30 June,			Bvt. 2 lt. 5 inf.,	1 July, 29	Ohio.	M. A.
John H. K. Burgwin,	31 July,			Bvt. 2 lt. 2 inf.,	1 July, 30	N. C.	M. A.
*Enoch Steen,	31 Dec., 40			2 lt. m. ran.,	16 July, 32	Ky.	Mo.
Burdett A. Terrett,	21 Feb., 42			3 lt. m. ran.,	10 July, 33	Va.	Va.
First Lieutenants.							
JAMES W. SCHAUMBURG,	1 Mar., 36			2 lt. m. ran.,	28 Mar., 33	La.	La.
William Eustis,	15 June,			Bvt. 2 lt. 3 inf.,	1 July, 30	R. I.	M. A.
Lucius B. Northrop,	4 July,			Bvt. 2 lt. 7 inf.,	1 July, 31	S. C.	M. A.
Henry S. Turner,	3 Mar., 37	Adjutant.		Bvt. 2 lt.,	1 July, 34	Va.	M. A.
Abraham R. Johnston,	15 June,			Bvt. 2 lt.,	1 July, 35	Ohio.	M. A.
Philip R. Thompson,	30 June,			Bvt. 2 lt.,	1 July,	Ga.	M. A.
William N. Grier,	14 April, 38			Bvt. 2 lt.,	1 July,	Pa.	M. A.
Thomas McCrate,	29 Jan., 39			Bvt. 2 lt.,	1 July, 36	Me.	M. A.
Philip Kearny, Jr.,	22 July,			2 lt.,	8 Mar., 37	N. Y.	N. Y.
Robert H. Chilton,	21 Feb., 42			2 lt.,	1 July,	Va.	M. A.
Daniel H. Rucker,	8 Oct., 44			2 lt.,	13 Oct.,	N. J.	Mich.
Second Lieutenants.							
Andrew J. Smith,	1 July, 38				1 July, 38	Pa.	M. A.
James H. Carleton,	18 Oct., 39				18 Oct., 39	Me.	Me.
Richard S. Ewell,	1 Nov., 40	Bvt.,	1 July, 40	Bvt.,	1 July, 40	Va.	M. A.
John W. T. Gardiner,	31 Dec.,	Bvt.,	1 July,	Bvt.,	1 July,	Me.	M. A.
Leonidas Jenkins,	31 Dec., 41	Bvt.,	1 July, 41	Bvt.,	1 July, 41	N. Y.	M. A.
John Love,	21 Feb., 42	Bvt.,	1 July,	Bvt.,	1 July,	Va.	M. A.
Abraham Buford,	12 April,	Bvt.,	1 July,	Bvt.,	1 July,	Ky.	M. A.
Armistead T. M. Rust,	1 July,				1 July, 42	Va.	M. A.
Patrick Noble,	31 Dec., 43	Bvt.,	1 July, 42	Bvt.,	1 July,	S. C.	M. A.
Henry W. Stanton,	8 Oct., 44	Bvt.,	1 July,	Bvt.,	1 July,	N. Y.	M. A.
Thomas C. Hammond,	1 July, 42	Bvt.		Bvt., 2 lt. 2 drag.,	1 July,	Pa.	M. A.
Alfred Pleasonton,	1 July, 44	Bvt.		Bvt.,	1 July, 44	D. C.	M. A.

*This officer was promoted to be Captain instead of his immediate senior First Lieutenant Schaumburg, whose name had been fraudulently pretermitted from the Register in June and July, 1838.

[ENDORSEMENT ON SENATE RESOLUTION OF MARCH 2d, 1849, RESPECTING JAMES W. SCHAUMBURG]

"Referred to the Secretary of War, March 3d, 1849. J. K. P."
"To be put on file in the office of the Adjutant-General. W. L. M. 3d March, 1849."

EXHIBIT XXVII.

RESOLUTION OF THE SENATE RE-AFFIRMING THE ABOVE RESOLUTION.

IN EXECUTIVE SESSION.
SENATE OF THE UNITED STATES.
March 1st, 1850.

Resolved, That the resolution of the 2d of March, 1849, respecting James W. Schaumburg, is hereby re-affirmed; and further, that the Senate considers first Lieutenant James W. Schaumburg has been improperly separated from the Army, and he is now entitled to the commission of Captain in the first Regiment of Dragoons, made vacant by the resignation of Captain Eustis; and that the Secretary of the Senate present a copy of this resolution to the President.

Attest: (Signed) ASBURY DICKENS,
Secretary.

EXHIBIT XXVIII.

LETTER OF 36 SENATORS TO PRESIDENT FILLMORE, RECOMMENDING LIEUTENANT SCHAUMBURG FOR PROMOTION.

SENATE CHAMBER, September 26th, 1850.

To His Excellency, Millard Fillmore, President of the United States,

SIR:—The undersigned beg leave respectfully to recommend to your Excellency to nominate JAMES W. SCHAUMBURG to a

Captaincy in the First Regiment of Dragoons, on the occurrence of the first vacancy in the said regiment. The Senate has twice declared by resolution his right to promotion—once at the last, and again at the present session. It is not the intention of the undersigned to enter here into a detail of the facts connected with Lieutenant Schaumburg's case. A paper containing a full statement of all the circumstances will be laid before your Excellency. Believing that he is entitled to promotion and deserving of it, we earnestly recommend him to you.

With great respect, we subscribe ourselves your Excellency's obedient servants,

JAMES COOPER,
S. W. DOWNS,
D. R. ATCHISON,
DANIEL STURGEON,
JAMES WHITCOMB,
JESSE D. BRIGHT,
GEO. W. JONES, Iowa,
H. S. FOOTE,
JOHN P. HALE,
JOHN WALES,
H. CLAY,
HENRY DODGE,
A. C. DODGE,
M. NORRIS,
J. P. WALKER,
JOHN BELL,
JAMES SHIELDS,
JACKSON MORTON,
W. K. SEBASTIAN,
PIERRE SOULE,
WM. M. GWINN,
LEWIS CASS,
TRUMAN SMITH,
THOS. J. RUSK,
J. C. FREMONT,
W. P. MANGUM,
S. A. DOUGLASS,
ALPHEUS FELCH,
SAM'L HOUSTON,
S. P. CHASE,
H. HAMLIN,
D. S. DICKINSON,
W. R. KING,
ROBT. C. WINTHROP,
J. DAVIS,
R. M. T. HUNTER.

Referred to the Secretary of War, October 8th.

M. F.

EXHIBIT XXIX.

ADJUTANT-GENERAL'S OFFICE,
WASHINGTON, May 16th, 1857.

It appears from the records of this office that *James W. Shaumburg* was the senior 2d Lieutenant in the Regiment of Dragoons on the 16th of June, 1836; was nominated to the Senate for promotion as 1st Lieutenant, in the above regiment, June 6th, 1836; was confirmed as such by that body, June 15, 1836, and was commissioned by the President of the United States, July 1, 1836, to take rank from March 1, 1836.

S. COOPER,
Adjt.-General.

EXHIBIT XXX.

WAR DEPARTMENT, June 11th, 1859.

James W. Schaumburg, Esq.,
Philadelphia,

SIR:—The President having referred to this department your letter of the 30th ultimo, with the request that it may be answered, I have to inform you, in reply, that your papers were duly laid before him, but that no decision on the call has yet been communicated to me.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

EXHIBIT XXXI.

PHILADELPHIA, PA., April 24th, 1861.

To Colonel Lorenzo Thomas,
Adjutant-General U. S. Army,
War Department, Washington, D. C.,

SIR:—I have to request you to bring to the notice of the Hon. Secretary of War the order of the 24th of March, 1845, directing

my name to be erased from the Official Army Register, the resolution of the Senate of the United States upon which the order was founded, and also the resolution of the Senate of the 2d March, 1849, recommending to the Executive to rescind the said order, which was left by Secretary Marcy not accorded with and ordered to be placed on file in the Adjutant-General's Office. I anticipate a vacancy that will allow of my being placed in my proper position—that is, a vacancy of field-officer which will first entitle me to be commissioned as Captain from the date Steen was promoted *Captain*, and to be commissioned as *Major* from the date *Steen* was promoted *Major*. This letter, with the order and resolutions as above, I wish to be presented to the Secretary when a vacancy of Major in the Dragoons occurs.

I remain, very respectfully, your obedient servant,

(Signed) JAS. W. SCHAUMBURG,
1st Lieut. 1st Regt. U. S. Dragoons.

NOTE.—By the name of Lieutenant SCHAUMBURG being pretermitted from the army roll by a fraudulent order, STEEN, who was next below SCHAUMBURG, succeeded to the several promotions to which SCHAUMBURG was entitled. STEEN was promoted to Lieutenant-Colonel, September 28th, 1861, and was retired September 23d, 1863. His retirement promoted MAJOR PALMER to Lieutenant-Colonel, and PALMER was promoted to rank as Colonel, June 9th, 1868; to all of which promotions SCHAUMBURG should have succeeded.

EXHIBIT XXXII.

PHILADELPHIA, PA., February 17th, 1873.

To Hon. Wm. W. Belknap,
Secretary of War,
Washington, D. C.,

SIR:—On the 6th of November last, I addressed to the Adjutant-General a communication, the same being a particular statement and averment from the record, &c., in my case, showing the official wrong done me; and in doing which the integrity of the records had been violated and vitiated, and so remain to this

time, against right and justice and my unceasing protest. I proposed to refer the whole matter to a board of officers to examine into the wrong proceedings against me in the months of June and July, 1836; and the various official proceedings had in my case, following upon the decision and orders of the President in January, 1844, and January, 1845, to wit, the Senate's resolution of March 19th, 1845, and in compliance thereof the General Orders No. 7, of the Secretary of War of the 24th of the same month, directing my name to be erased from the Official Army Register, which was issued without any notice to me to appear and defend my rights as an officer and citizen which had been fully recognized and decided by the President on my appeal, and finally adjudicated according to the established rule of the executive department which could not be disregarded or set aside by any succeeding arbitrary or *ex parte* executive order.

I requested the Adjutant-General to lay my communication before you for your consideration at the earliest moment; not hearing from him, I now address you to ask to be informed whether my proposition or request for a reference of my allegations to a board of officers as was done in Drane's case, will be accorded, and if not, that I may the sooner apply to the President for justice under the Constitution and laws, which I am entitled to have, and which has been so long wrongfully denied to me.

I have the honor to remain, your obedient servant,

JAS. W. SCHAUMBURG,

Commissioned First Lieutenamt 1st Regt. Dragoons, now the 1st Regt. of Cavalry, U. S. Army.